Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 1041.

BERTHA HOPKINS ET AL., *Appellants*,

vs.

WILLIAM B. HOPKINS ET AL., *Appellees*.

MOTIONS.

1. To Dismiss Appeal.
2. To Increase Bond.

BRIEF OF APPELLANTS.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 12 day of March, 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: Supreme Court U. S. October term, 1890. No. 383. Bertha Hammond (sued as Bertha Hopkins) *et al.*, appellants, *vs.* William B. Hopkins *et al.* Stipulation & addition to record. Filed March 13, 1891.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 1041.

BERTHA HOPKINS ET AL., *Appellants,*

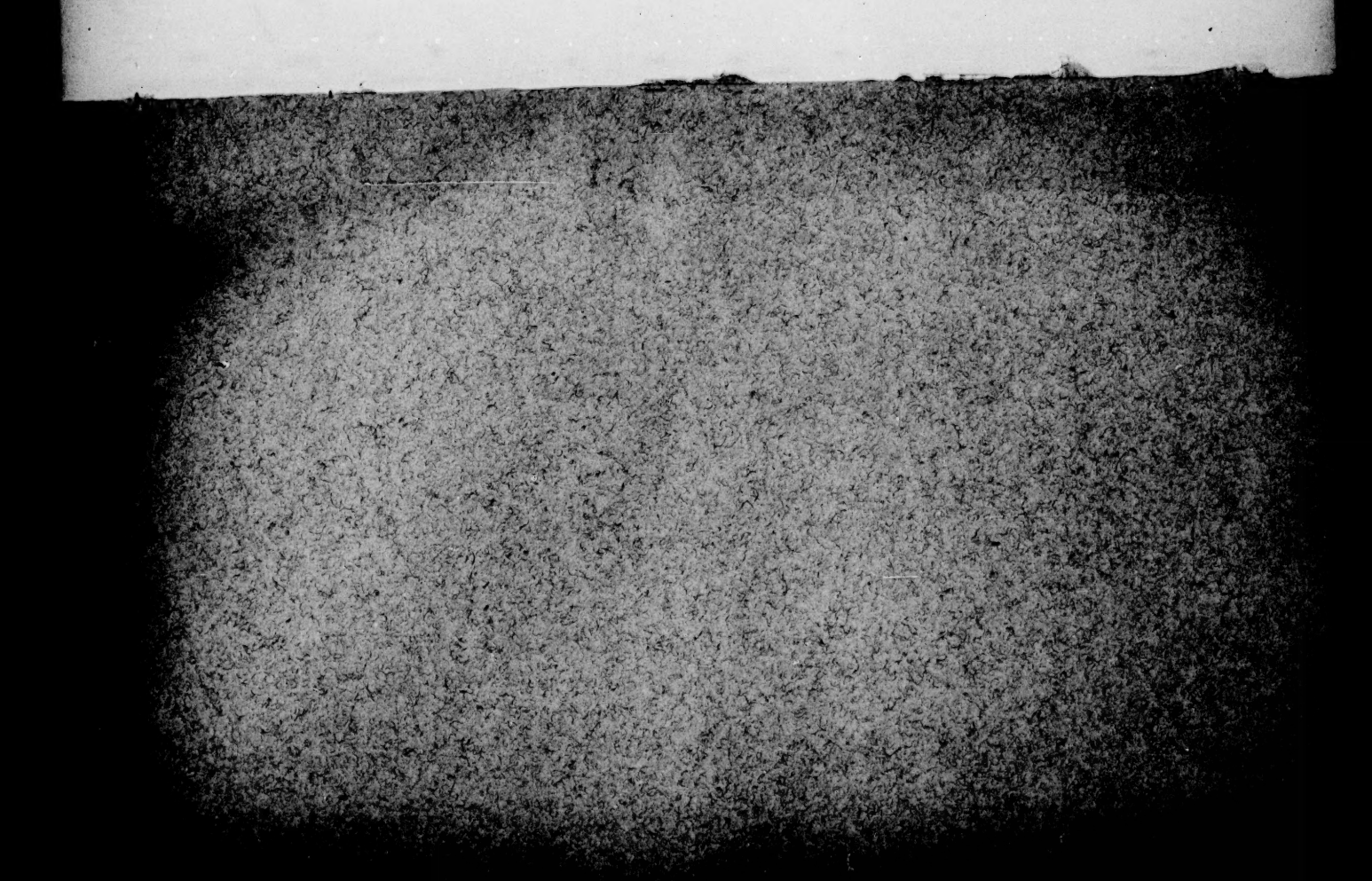
vs.

WILLIAM B. HOPKINS ET AL., *Appellees.*

MOTIONS.

1. To Dismiss Appeal.
2. To Increase Bond.

BRIEF OF APPELLANTS.



Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 1041.

BERTHA HOPKINS ET AL., *Appellants,*

vs.

WILLIAM B. HOPKINS ET AL., *Appellees.*

STATEMENT OF THE CASE.

Two brothers, George W. Hopkins and John Hopkins, were partners in the business of brick making and the owners in fee simple as tenants in common of certain squares and lots in the northwestern part of the city of Washington upon which the business was carried on, and one of them, George W. Hopkins, resided. John Hopkins died November 27, 1858, and by his will devised his undivided moiety in said real estate to his brother and his son, John S. Hopkins, in trust to continue the business, and upon his youngest child, Alice, attaining the age of eighteen to make division of said moiety among his children. The testator had nine children who survived him—five sons and four daughters.

Alice attained eighteen April 13, 1864.

On the 10th of May the trustees sold the property at public auction, advertising and selling as well the moiety of George W. Hopkins as that of the testator.

At the sale a large portion of the property, principally the two squares where, with the clay there found, the business of brick-making was carried on, was bought by the trustees.

Another portion of the property, including the residence of George W. Hopkins, was bought by him alone. The rest was bought by different persons, strangers to this controversy. The purchases, made by the trustees jointly and by one of them individually, were made by James Chapman, to whom the trustees conveyed, and on the same day received a reconveyance. After the sale the business was carried on by George W. Hopkins and John S. Hopkins, in their own right, until the death of the former in 1875. There was then a partition of the property bought by George W. Hopkins and John S. Hopkins jointly, by decree in chancery, and of the property allotted to the heirs of George W. Hopkins by that decree, and also of the property bought by him individually, or what was unsold, there was a further partition also by decree in chancery.

At the time of the sale of the 10th of May, 1864, one of the sons of the testator had died intestate and without issue, so that at that time there were eight living children of the testator, including John S. Hopkins, one of the trustees. All these children were of full age (except Alice), and all *sui juris* except a daughter who was then married, but became a widow in September following. The proceeds of the sales were accounted for and paid over by the trustees to the children entitled and receipted for by them in full dis-

charge, except the share of Alice, which was held in pursuance of the will, and after she attained full age April 13, 1867, and had married in May, 1868, was paid to and receipted for by her husband.

The Mix property mentioned in the decree was property in the neighborhood of that sold, which was claimed by George W. Hopkins to be partnership property, and of which, when sold by the trustees, he retained one-half the proceeds, the balance being paid to the children of the testator and receipted for by them in full discharge.

This element of the controversy was introduced by an amendment to the bill.

Bettie Davenport, mentioned in the decree, is the devisee of one of the sons of George W. Hopkins, who died after the decrees above mentioned.

The bill was filed April 18, 1884, and sets up a constructive trust in respect of the moiety of the property belonging to the testator and purchased by James Chapman for the benefit of the trustees and one to them. The ground of this trust is that the trustees would not buy at their own sale. The bill is replete with charges of fraud, in fact, but neither court found any such fraud.

When the bill was filed twenty years, less thirty-two days had elapsed from the time of the sales impeached. The value of the property had increased from a few cents per square foot to from $2.50 to $3.50 per square foot. George W. Hopkins was dead, having died in 1875. John S. Hopkins was also dead, having died May 7, 1883. James Chapman was dead, having died in 1868. Two sons of the testator, living at the sale, had also died. Of the property purchased by both trustees, and by George W. Hopkins one

of them, sales were made from time to time, and after the death of George W. Hopkins the decrees in partition above mentioned, sales were made by his heirs-at-law from time to time, and a sale was also made by John S. Hopkins. Improvements of large value were placed upon the property and heavy special assessments paid.

The defense was knowledge and acquiescense and laches.

At the hearing in special term Judge Merrick dismissed the bill. A copy of his opinion is filed. In general term the judges who sat were Chief Justice Bingham, and Justices James and Hagner.

The opinion was delivered by Mr. Justice James, orally, and no written opinion has been filed. The ground taken was that no time short of twenty years would bar the trust.

POINTS AND AUTHORITIES.

Two questions are presented by the motions of the appellees.

I. The finality of the decree appealed from.

II. The sufficiency of the bond.

I.—The Finality of the Decree.

A careful examination of the decree appealed from will show that—

First. It absolutely and finally annuls the title acquired to the moiety of the property which belonged to the testator. It declares (Par. 5) that said sales were, and each of them was, and hereby are, adjudged to be fraudulent and void, and the said deeds are each and every of them, except as hereinafter provided, is hereby declared and adjudged to be

null and void, and the same are set aside and shall forever hereafter be held for naught. It declares the equity of the cause to be with the complainants and awards costs against the defendants.

After this sweeping annulment of title, the decree proceeds to deal with the property sold and that remaining unsold. As to the former it declares that the property sold, being to *bona fide* purchasers, shall not be affected by the decree, but that Bettie Davenport shall not be regarded as a *bona fide* purchaser, and it further declares that the purchase-money derived from the property sold shall be decreed to be a part of the trust estate in lieu of the land from which the same was derived, and shall be a lien on the unsold portion of the property. As to the property remaining unsold, which is enumerated in paragraph —, the decree declares that the alleged and pretended title to it "is hereby divested."

It is thus plain that the sales and the conveyances in pursuance thereof are declared void, and that when the property has been sold the purchase-money realized is made part of the trust estate, and where property remains unsold the title acquired by the sales and conveyances declared void is by the decree divested.

Second. The decree then refers the cause to the auditor, with directions to state an account, charging the trustees with all moneys received by them jointly from sales of the property the purchase of which is decreed to be void, with interest on said moneys from the date of payment to the date of the account; also an individual account, charging each of them individually with money so received, and

with like interest. Similar accounts are directed as to moneys received by the heirs-at-law of George W. Hopkins and of the trustees, with like interest. These heirs-at-law and also the widow and heirs-at-law of John S. Hopkins, the other trustee, are to be charged with rents, with like interest. The proceeds of the sales declared void, distributed by the trustees, are with interest from payment to be credited, and George W. Hopkins is to be charged with a moiety of the money received from the Mix property, which he retained under the claim that the said property was partnership property.

Third. If the *entire indebtedness* found due by these, accounts shall be paid into court within ninety days after the report of the auditor and its confirmation, *then the auditor shall proceed to inquire* into the *practicability of partition* of the property remaining unsold.

Fourth. If such indebtedness shall not be so paid or if partition is impracticable, then a trustee is appointed to sell all the property (both moieties) at public auction and the notice and terms of sale are specifically provided for.

Fifth. The auditor shall state an account dividing the net proceeds of sale as follows: One half the net proceeds shall be applied to the indebtedness of George W. Hopkins and his representatives, as found to be due—that is, to the excess received by him and them over his half interest in said proceeds. This sum so applied *and the other half of the net proceeds*, belonging to the estate of John Hopkins, shall be equally divided among his representatives.

The share belonging to the representatives of John S.

Hopkins shall be charged with the amount received in excess of his share as one of the devisees of John Hopkins.

Sixth. The right of the complainants to a personal decree is reserved.

Seventh. Costs are awarded the complainants.

It is submitted that such a decree is final for the purpose of an appeal to this Court. It adjudges the sales of the 10th of May, 1864, of the moiety which belonged to the testator, John Hopkins, to be void. It adjudges the deeds made in pursuance of those sales to be void, and that said deeds shall "forever hereafter be held for naught." As to the property sold it adjudges that the purchase money as well as the rents shall stand in lieu of the property and shall be part of the trust estate and a lien upon the unsold property. As to the property unsold and in specie it adjudges that the title of the defendants is "HEREBY DIVESTED."

Thus by annulling the sales, deeds, and titles, the original moieties were restored as if no sale had taken place. The John Hopkins moiety is adjudged to belong to the complainants and the George W. Hopkins moiety is adjudged to be subject to the above lien. The decree then refers the cause to the auditor to ascertain and report the amount of the lien thus imposed on that moiety. It then adjudges, *in advance of the report*, the sale of both moieties, appointing a trustee, and minutely prescribing the notice and terms of sale. It denies even an inquiry as to the practicability of partition except the payment into court within a limited time of the full amount found due. The adjudication of sale is *final and absolute, defeasible upon payment of the amount found*

due and the practicability of partition, but in no other way. Reaching out still further into the future the decree adjudges that one-half the net proceeds, that representing the John Hopkins moiety, and so much of the other half as will make good the excess received by George W. Hopkins and those claiming under him, over and above his and their half interest, shall be paid to the complainant.

It further adjudges as between the heirs-at-law of John Hopkins that the share of John S. Hopkins shall be charged with any amount received by him or his representatives in excess of his share as devisee of John Hopkins.

It adjudges the Mix matter, and, indeed, every question in the cause, with the single exception of a personal decree, which and which alone is reserved for future judicial action.

This reservation cannot effect the finality of the decree. No such contention can be seriously made. In other respects the decree simply exhausts judicial judgment.

The decisions of this Court in the class of cases to which the present belongs places the finality of the decree beyond question.

In Michaud *vs.* Girod, 4 How., 563, decided in 1846, the bill was filed, as here, to set aside certain deeds for property purchased by trustees at their own sale, and for an account of the proceeds of so much of the property as had been sold by them. The decree of the court below will be found (p. 534). It vacated the decree and ordered the account (pp. 534, 535). An appeal was taken from the decree, and this court entertained jurisdiction, and its action was in terms approved in the case of Forgay *vs.* Conrad, 6 How., 201, 204, decided two years after. That case was, like the preceding, a bill to set aside deeds and for an account of property sold.

The decree set aside the deeds and directed the account. Before the account was taken the case was brought here by appeal and a motion made to dismiss for the want of jurisdiction was overruled.

Of the same character was Thompson *vs.* Dean, 7 Wall., 342, decided in 1868. These cases are too familiar to require more than a reference to them. They fully establish the doctrine that when the right of the property in dispute is adjudicated and the title changed, the decree is final, although the cause is not completely disposed of by reason of accounts directed to be taken. Applying this doctrine to the present case, the decree finally adjudicates the right of complainants to the property in dispute, sold and unsold. As to the latter, it divests the title of the defendants and invests the complainants with such title. As to the former, it adjudicates title precisely as in Michaud *vs.* Girod and Forgay *vs.* Conrad, to purchase money, rents, and interest, and makes the amount a lien upon the George W. Hopkins moiety of the unsold property, and in pursuance of such adjudication directs the accounts. When such is the case, the accounts directed are in the words of Forgay *vs.* Conrad, pp. 203, 204, " but a mode of executing the original decree."

The Court is further respectfully referred to Winthrop Iron Co. *vs.* Meeker, 109 U. S., 180; St. Louis, Iron Mountain, and Southern R. R. Co. *vs.* Southern Express, 108 U. S., 24; Trustee *vs.* Greenough, 105 U. S., 531; French *vs.* Shoemaker, 12 Wall., 86; Barnard *vs.* Gibson, 7 How., 650; Whiting *vs.* Bank, 13 Pet., 15. The question is whether the court below has adjudicated the merits of the controversy. If the bill and its prayers are examined, it will be impossible to discover any issue not adjudicated.

Indeed, not only are the issues as made adjudicated, but every question incidental to the execution of the decree is anticipated and acted on.

Applying, then, the settled rule to the present decree, its provisions are divisible into two classes, such as adjudicate the merits, and such as provide and relate to the machinery for carrying into execution that adjudication. As to the first, the decree absolutely and finally adjudicates that the complainants were never legally deprived of their title to a moiety of the property, and hence are entitled to a moiety of the property unsold and a fund representing a moiety of the property sold, and that they are entitled also to the moiety withheld of the proceeds of the sales of the Mix property. These are the merits. The title to a moiety of the property unsold is taken away from the defendants and decreed to belong to the complainants, and the defendants are decreed to owe to the complainants the above fund and proceeds, and to ascertain the same the accounts are directed. It is said that the adjudication as to the accounts is not final, but this Court has determined otherwise. The merits, therefore, are adjudicated; all beyond is incidental to and in execution of the adjudication of the merits; in other words, is the mere machinery for enforcing the rights of the complainants as adjudicated. The adjudication of the merits as made cannot in any respect be changed by what may transpire in the course of execution. The title of the complainants to the property, unsold and sold, and the fund representing the latter, and to the proceeds of the mix property is forever determined. The case is not one where a reference to an auditor or master is made preparatory to judicial action and to aid the court in making

a decree, but the case is one where judicial action has already been had, and embodied in the most formal manner in a decree, and where the whole purpose of the reference is in execution and enforcement of such judicial action. The reports of this court contain numerous cases of references preliminary to and in aid of future judicial action; such are Burlington Railway Co. *vs.* Simmons, 123 U. S., 52, and Parsons *vs.* Robinson, 122 U. S., 112; Grant *vs.* Phœnix Insurance Co., 106 U. S., 429, and other cases. An example where the decree was held final is furnished by First National Bank of Cleveland *vs.* Shedd, 121 U. S., 74. Whether the decree adjudicates the merits presently, or, waiting for further light, or from any other cause postpones such adjudication, is merely a question of construction, and whatever doubt there has existed in other cases it is submitted there is no shadow of doubt in the present.

So much for the class of provisions adjudicating the merits. The other class, as already stated, is incidental to and in execution of the adjudication of the merits, and furnishes the machinery whereby the rights adjudicated are to be enforced.

It is only by confounding the two classes that any color can be given to the motion to dismiss. Thus it is ingeniously argued that further judicial action is contemplated upon the report of the master. That is so; but the fallacy of the argument consists in assuming that there is to be any further judicial action in respect to the merits already adjudicated. As to them, there is to be none. The right and correlative liability, part of the merits, have been adjudged and determined forever. The *amount*, representing such right and liability, only has to be adjudged.

The argument is that the appellants should have waited until the order fixing such amount before appealing. But will it be pretended that such order would be a final decree upon the merits of the case? It would be final only as it would be the last judicial act in respect of time; but it would be upon the single point of *amount*, and in no sense upon the merits of the case.

Will it be said that the decree contemplates that after such order the court is to act again upon the merits and readjudicate what has already been adjudicated?

It is next argued that there is no final decree for sale. If this were true it would signify nothing, it would not indicate in any way that the merits had not been adjudicated. The provisions as to sale relate simply to the execution of the adjudication of the merits. But it is not true that there is no final decree for sale. The decree provides that if the amount found due be not paid within the time prescribed the auditor (without any further act of the court) shall inquire as to the practicability of partition, and that if a partition be practicable it shall be made; but if the amount found due be not so paid, or if partition be impracticable, the sale shall proceed. Thus it is plain that the decree does direct a sale, but that the defendants by paying within the time the amount found due may have an inquiry as to the practicability of partition and may have partition if practicable.

That is, the legal right to partition is denied unless the defendants pay the amount and thereby buy that right; if the defendants do not pay the amount the sale is, by the express terms of the decree, to proceed. What, then, is the decree but one for sale, with the option to the defendants to have

in lieu of it partition, if practicable, on payment of the amount found due, which amount the brief filed in support of the motion declares (p. 43) to be greater than the moiety of the appellants in the unsold property. If that assertion in the brief be correct the amount to be paid would exceed $150,000.

By payment and by it alone can the sale be prevented. Such a decree is clearly one for sale defeasible on payment. It is like the ordinary decree for sale in foreclosure suits, which is not to be executed if the debt be paid within the time limited.

It will be observed that the provisions for the sale is not in any manner more dependent upon the amount found due; whether the amount be much or little the sale goes on. By payment alone can the sale be prevented, and not even by payment if partition be impracticable. Two conditions, payment and practicability, must concur to prevent the sale. The question here is, however, not how the sale may be pre-prevented, but whether, in respect of it, the decree is final; and that it it so is demonstrated by the fact that the sale proceeds without any further judicial authority than that given by the decree, unless prevented in the manner described, and the further fact that the prevention of the sale, as prescribed by the decree, is not by means of *any further judicial act on the part of the court*, but by means of the *act of the defendants* in making the payment. Again it is argued in support of the motion that the decree is not final, because no right or title or possession of the appellants is disturbed.

This, however, is not the fact; the right and title of the appellants as to a moiety of the unsold property is by the

express terms of the decree divested, and a liability is expressly adjudged and made a lien upon the other moiety.

As to the possession, counsel seem to forget that before the sales of May 10, 1864, the property was held in common in fee and that the legal effect of the annulment of the sales, deeds, and divestiture, was to restore the relation of tenants in common, and that the possession of the defendants was after the decree that of the complainants. It would be easy to show that under the circumstances of this case the complainants could maintain under the decree an action of ejectment to recover a moiety of the unsold property. The purpose of the trust in the will of John Hopkins having been satisfied, the legal title given to the trustees would cease to exist in them and become vested in the complainants.

Doe *vs.* Considine, 6 Wall., 458.

Young *vs.* Bradley, 101 U. S., 788.

But besides this, counsel also forget that the court by the decree has adopted its own machinery for enforcing the rights it has adjudicated and determined.

It has not resorted to the ordinary processes of execution for the plain reason that they were insufficient to afford the relief to which the complainants were entitled, if entitled to any. It has on the other hand—in view of the tenancy in common, adjudicated the liability of the defendants and its imposition as a lien upon their moiety, the necessity of sale or partition is also adjudicated—adopted its own scheme of execution as declared by the provisions of the decree relating to its execution.

But that scheme is as absolutely destructive of the rights

of the defendants as the ordinary process would be if applicable, and the complainants are entitled to have that scheme carried into immediate execution.

It is unnecessary to review the authorities relied on in the brief in support of the motion. They are all familiar with this court. Whilst it is easy to extract isolated passages an examination of the cases will show that some are wholly irrellevant to the present motion and others in favor of the jurisdiction, and that not one gives any support to the theory that a decree like the present is not final for the purposes of an appeal to this Court.

II. The motion for further security.

The penalty of the bond was fixed by Chief Justice Bingham, who sat in the cause. His order is as follows:

On the application of the solicitors of the defendants in the above-entitled cause it is, this 11th day of July, 1888, ordered that the penalty of the appeal bond, to operate as a supersedeas, to be given in pursuance of the appeal taken and allowed from the decree in said cause be, and the same is hereby, fixed at the sum of five thousand (5,000) dollars.

In compliance with that order a bond was tendered, and approved by Mr. Justice James, who also sat in the cause.

It is now proposed in this motion to re-try the sufficiency of the security as fixed in the exercise of judicial discretion. This cannot be done.

1. There is no pretense that the "circumstances of the case or of the parties or of the sureties upon the bond have changed."

Jerome *vs.* McCarter, 21 Wall., 17.
Martin *vs.* Hazard Powder Co., 93 U. S., 302.
Draper *vs.* Davis, 102 U. S., 371.
Johns *vs.* Waters, 108 U. S., 4.

2. The grounds of the motion to re-try are the insufficiency of the penalty of the bond and want of notice. The sufficiency of the sureties is admitted. The amount has been twice judicially passed upon. It is proposed to overrule judicial action by *ex parte* affidavits that, if true, which is not conceded, would by no means conclude the question of amount.

As to notice, no statute or rule of practice requires it; and moreover, notice of the order of Chief Justice Bingham is not denied.

WALTER D. DAVIDGE,
SIDNEY T. THOMAS,
HENRY WISE GARNETT,
Solicitors for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1041.

BERTHA HAMMOND (SUED AS BERTHA HOPKINS) ET AL.,

vs.

WILLIAM B. HOPKINS ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BILL OF COMPLAINT.

1. Supreme Court of the District of Columbia.

WILLIAM B. HOPKINS, ANNA B. HOPKINS, by Her Next Friend, William B. Hopkins; Sarah E. Hopkins, by Her Next Friend, Elizabeth A. Early; Elizabeth A. Early, Mary V. Wailes, Alice C. Hall, and Ida M. Stone, Plaintiffs,

vs.

BERTHA HOPKINS, BERTHA HOPKINS, Administratrix of John S. Hopkins; Esther E. Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins, Bettie Davenport, Samuel C. Raub, Trustee for Bettie Davenport; Samuel C. Raub, Executor of Geo. N. Hopkins; L. Freddie Hopkins, Administratrix, Thomas J. Luttrell, Administrator, of George W. Hopkins; Thomas J. Luttrell, Executor of Cornelius Hopkins.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff states as follows:

1. That William B. Hopkins is a citizen of the District of Columbia and brings this suit in his own right; that Anna B. Hopkins is

an infant in the sixteenth year of her age and brings this suit in her own right, by her next friend, William B. Hopkins; that Sarah E. Hopkins is a citizen of Baltimore city, in the State of Maryland, and brings this suit in her own right, by her next friend, Elizabeth A. Early; that Elizabeth A. Early is a citizen of said District and brings this suit in her own right; that Ida M. Stone is a citizen of St. Mary's county, in the State of Maryland, and brings this suit in her own right; that Mary V. Wailes and Alice C. Hall are each citizens of said District and bring this suit respectively in their own rights.

2

2. That the defendants, Bertha Hopkins, Ester E. Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins, and Bettie Davenport are each citizens of the District of Columbia and are each sued in their own right; that the defendant, Bertha Hopkins, is a citizen of said District and is sued in this action as administratrix of John S. Hopkins, deceased; that the defendant, Samuel C. Raub, is a citizen of said District and is sued in this action as trustee for said Bettie Davenport and as executor of George N. Hopkins, deceased; that the defendants, L. Freddie Hopkins and Thomas J. Luttrell, are each citizens of said District and are sued in this action as administratrix and administrator, respectively, of George W. Hopkins, deceased; that the defendant, Thomas J. Luttrell, is a citizen of said District and is sued as executor of Cornelius Hopkins, deceased.

3. That prior to and on the 23rd day of November, in the year 1858, one John Hopkins and one George W. Hopkins were seized and possessed in fee simple, each of an undivided moiety, as tenants in common, of all of squares numbered ninety-four (94), ninety-five (95), ninety-six (96), one hundred and ten (110), one hundred and eleven (111), and lot numbered three (3), in square eighteen (18), all situated in the city of Washington, District of Columbia, as the same are laid down on the public plats of said city.

4. That, being seized and possessed as aforesaid, the said John Hopkins executed, on the said 23rd day of November, 1858, his last will and testament, a true copy of which (marked Exhibit Hopkins No. 1) is herewith filed as a part of this bill, by which he gave and devised all his interest in his said real estate to his brother, said George W. Hopkins, and his son, John S. Hopkins, and the survivor of them and the heirs of each survivor in trust for the following uses, viz: To carry on the brick-making business on said land; to receive the rents, profits, issues, and income of said estate and business; to support the family of said testator until May 1st, 1864; to sell such portions of said real estate when in their judgment it would be advantageous, exempting purchasers thereof from seeing to the application of the purchase-money; to invest the surplus proceeds arising from said sales; and upon the arrival of his daughter Alice to the age of eighteen years, which would occur on or about the first day of May, 1864, his estate of every kind should be divided by said trustees among his children, reposing especial

3

trust in the prudence and discretion of said trustees, and giving them full power to exercise their judgment as circumstances might arise, and believing that they would have the welfare of his family at heart; as all of which will more fully and at large appear by reference to said last will and testament.

5. That the said John Hopkins continued seized and possessed as aforesaid of said land, and departed this life on the 27th day of November, 1858, leaving as children and his heirs-at-law Isaac H. Hopkins, since deceased, without issue, the said Elizabeth A. Early, born Hopkins; George W. Hopkins, William M. S. Hopkins, Emeline V. Lilburn, born Hopkins; Mary V. Wailes, born Hopkins; Alice C. Hall, born Hopkins; John S. Hopkins, and Levin Hopkins.

6. That the said Isaac H. Hopkins and Levin Hopkins have since died intestate without issue; that the said George W. Hopkins has since died, in the month of July, 1870, leaving as his only children and heirs-at-law said William B. Hopkins, then eleven years of age, and Anna B. Hopkins, then two years of age; that the said Emeline V. Lilburn has, on the seventh day of April, 1884, conveyed all her right and title absolutely and unconditionally in said estate to her daughter, Ida M. Stone, one of the plaintiffs; that the said
4 John S. Hopkins has since died on the 7th day of May, 1883, leaving as his only child and heir-at-law said defendant, Bertha Hopkins.

7. That the said George W. Hopkins and said John S. Hopkins accepted the said trust, entered into possession of said premises, carried on the business of brick-making for several years, collected the rents and profits of said estate, and these plaintiffs have lately been informed and believe and so charge that the said trustees sold at various times prior to the first day of May, 1864, portions of said property, for which they received $4,000, the particulars of which these plaintiffs will prove on an account before the auditor of this court.

8. That it has lately come to the knowledge of these plaintiffs (the circumstances of which knowledge are hereinafter set out at length in their chronological order) and they charge that the said trustees at this period in the existence of their trust meditated a scheme by which they as trustees should by artifice and fraud become seized and possessed of said entire estate, in their own right and property, to the exclusion and detriment of these plaintiffs, freed and discharged of the trusts under which they held it; that in pursuance of this scheme of fraud the said John S. Hopkins, fraudulently, on or about the 20th of June, 1860, and while he was trustee under said will for his brother, said William M. S. Hopkins, operated upon and persuaded the latter that it would be for his benefit for him, said William, to make him, said John S. Hopkins, a conveyance of his share in his late father's estate, the said John S. Hopkins promising to hold the same for his use and benefit; that the said William being at that time of exceedingly dissipated habits, whose mental capacity was so enfeebled by excesses in alcoholic stimulants as to be incom-

petent to make a valid deed or contract, and who was subsequently confined in the United States Hospital for the Insane in said District on three several occasions, aggregating more than two years; that the said William, while in this state of mental incapacity, did, at the
5 instance and dictation of the said John S. Hopkins and while under his control, sign not only his own name to an absolute conveyance of all his share in the estate of their father for an alleged consideration of three thousand dollars, which was never paid, but also, at the command and direction of said John, did sign and write the name of said plaintiff, Sarah E. Hopkins, the wife of said William, to said deed without the knowledge, privity, or consent of said plaintiff, Sarah E. Hopkins, and by means of fraud, unknown to these plaintiffs, obtained a certificate of acknowledgment to said deed by two justices of the peace. The said deed was recorded by the said John S. on the 7th July, 1860, and redelivered to him by the record of said deed on the 25th January, 1864, and the plaintiffs pray the production and discovery of the same. A certified copy of the record of said deed is hereto annexed (marked Hopkins No. 2) and prayed to be read as a part of this bill; and these plaintiffs severally aver that of each and all of which facts each and all these plaintiffs have been totally ignorant until within two months last past; the circumstances of their acquiring their knowledge of the same will be hereinafter stated at length; and which said deed, by proper and independent proceedings in equity, the plaintiff, Sarah E. Hopkins, by her next friend, and Christopher Ingle, as trustee, will pray this honorable court to vacate, cancel, and declare the trust as still existing in favor of said Ingle and Sarah E. Hopkins, as assignees of said William.

9. That it has lately come to the knowledge of these plaintiffs (the circumstances of which knowledge are hereinafter set out at length in their chronological order) that the said William M. S. Hopkins, knowing that he had not sold and conveyed in fact the interest, right, and title to his patrimony to said John S. Hopkins, nor had received the payment of the consideration therein mentioned, did, on the 28th January, 1864, convey all his right, title, and interest in his said father's estate to said plaintiff, Christopher Ingle, his
6 heirs and assigns, in consideration of natural love and affection for his wife, the said plaintiff, Sarah E. Hopkins, and the sum of ten dollars, in trust for the benefit of said Sarah E. Hopkins, as will more fully appear by reference to said deed, recorded in Liber N. C. T. 25, fol. 246, and prayed to be read as a part of this bill, whereby the said Christopher Ingle, his heirs and assigns, has become entitled to the share of the estate of the said John Hopkins, the common ancestor, to hold the same in trust for the uses and purposes mentioned in said deed; and these plaintiffs severally aver that of each and all which facts each and all these plaintiffs have been totally ignorant until within about two months last past; the circumstances of their acquiring their knowledge of the same will be hereinafter stated at length.

10. That it has lately come to the knowledge of these plaintiffs (the circumstances of which knowledge are hereinafter fully set forth) and they charge that the said trustees, in furtherance of their fraudulent scheme by which they, as trustees, should become seized and possessed of said entire estate in their own right and property, freed and discharged of the trusts under which they hold it, to the exclusion of these plaintiffs, and thereby also to enjoy the undisturbed possession and enjoyment of the said brick business, the said trustees, under the authority given by the said last will and testament, did cause the whole of said property to be advertised for sale at public auction on the 10th day of May, 1864, a copy of which advertisement is filed herewith (marked Exhibit Hopkins No. 3) and prayed to be read as a part of this bill; that they did fraudulently procure one James Chapman, now deceased, to attend such sale, and bid for them, said trustees, secretly and fraudulently on their own behalf as individuals for a large majority of the property offered, constituting the most valuable portion of the same—that is to say, that the said Chapman was the purchaser for said trustees at their own sale of the whole of squares Nos. 95 and 96, all of lot No.
7 1, in square 94, on 20th street, containing 187,422 square feet, at 4 cents per square foot; the whole of square No. 111, containing 101,038 square feet, at 9 cents per square foot; lots 16, 17, 18, 19, 20, 21, and 22, in square No. 110, at 8½ cents per square foot, and lots 38 and 39, in square No. 110, at $315 per lot; that the balance was sold to strangers, who were *bona fide* purchasers for value, and whose title is indefeasible so far as the claim of these plaintiffs extend.

11. That after the sale, on the return of the said George W. Hopkins, trustee, to the home residence, Emeline V. Lilburn, one of the heirs, on hearing the price for which the said land was sold, expressed her surprise to said trustee, her uncle, that it had brought so low a price and that he had allowed it to be sacrificed. He thereupon assured her that the said sales were each and all *bona fide*, which said false and fraudulent assertion neither of the said trustees have ever corrected, but purposely have allowed these plaintiffs for now nearly twenty years to rest under the belief that the same was true; that the said fraud in said sale has been discovered by the plaintiffs only within a few weeks last past under circumstances hereinafter set out at length.

12. That in pursuance of said fraud a conveyance was made on the 20th May, 1864, by said trustees to said Chapman of lot 1, in square 94, all of squares 95, 96, and 111, and lots 16, 17, 18, 19, 20, 21, 22, 38, and 39, in square 110, for the consideration of one dollar, and recorded on the sixteenth November, 1864, in Liber N. C. T. 49, folio 334, a certified copy of which is herewith filed as a part of this bill (marked Exhibit Hopkins No. 4) and prayed to be read as a part hereof, and these plaintiffs pray the production of the original conveyance; and on the same 20th May, 1864, and contemporaneously therewith, the said Chapman executed a reconveyance of

the same property, except square 111, for an alleged consideration of $10,842.24 to the said George W. Hopkins and John S. Hopkins as individuals, which said conveyance was delivered for record
8 on the said 16th November, 1864, contemporaneously with the last recited conveyance, and was recorded in the same liber, N. C. T. 49, folio 336, a certified copy of which is herewith filed as a part of this bill (marked Exhibit Hopkins No. 6) and prayed to be read as a part of this bill, and these plaintiffs pray the production of the said original conveyance; and on the same 20th May, 1864, and contemporaneously with said two conveyances, the said Chapman executed a reconveyance of square 111 for an alleged consideration of $9,093.42 to the said George W. Hopkins as an individual, which said conveyance was delivered for record on the said 10th of November, 1864, contemporaneously with said other two conveyances, and was recorded in the same liber, N. C. T. 49, folio 343, a certified copy of which is herewith filed as a part of this bill (marked Exhibit Hopkins No. 7) and prayed to be read as a part of this bill, and these plaintiffs pray the production of the said original conveyance; and these plaintiffs allege that the said purchase by said Chapman was for the benefit of said trustees as individuals while in the discharge of their trust without the knowledge or consent of these plaintiffs, and said conveyance to said Chapman and reconveyance by said Chapman to said trustees, George W. Hopkins and John S. Hopkins, as individuals, and to said George W. Hopkins individually, were each and all fraudulent and void; that the trusts under said original will have never been executed, but still subsist in favor of these plaintiffs against the said trustees and their heirs and volunteers.

13. That it has lately come to the knowledge of these plaintiffs (to be detailed hereafter) and they charge that the said trustees, in furtherance of their said fraudulent scheme to possess themselves individually of the said trust estate and brick business and in order to give a semblance of right to their said fraudulent conduct, did, after lapse of nearly seven years from the death of their testator, file in the orphans' court of said District "a first and final ac-
9 count" of what purported to be "an account of the personal estate of John Hopkins, deceased, by George W. and John S. Hopkins, executors," alleged to consist of the personal estate of said decedent, of the profits made out of the brick business, and the value of the deceased's interest in the firm of John and George W. Hopkins, showing that there was for distribution the sum of $22,131.46, and these plaintiffs have caused diligent search to be made among the records of said orphans' court for the vouchers and papers on which said account was based, but have not been able to find the same, so as to discover in what manner the item of $14,952.66, the proceeds of the sale of the half interest, was made up; a certified copy of which account is herewith filed (marked Exhibit Hopkins, No. 8) and prayed to be read as a part of this bill; and the said trustees, without explaining the nature of their trust or their fraudu-

lent conduct in regard to said sales, and without actual notice to or any personal knowledge of any of these plaintiffs, did obtain an order of said court directing a distribution of the sum of $2,667.60 to each of the children then living of said John Hopkins as heirs-at-law.

And these plaintiffs are advised and aver that the said orphans' court had no jurisdiction in the administration of trusts as regards either real or personal property; that the division of the real estate of said decedent was the administration of a trust, and therefore, if said order was a distribution of the proceeds of said pretended sales to Chapman, which they charge it was not, that the said order obtained by said trustees directing such division was without the jurisdiction of said orphans' court and void, and not binding in a court of equity, the only competent tribunal in the District of Columbia to administer and enforce trusts.

14. That subsequently to the said order of said orphans' court the said trustees paid to each of the children, these plaintiffs, or their ancestors, then living, except to William M. S. Hopkins, the said distributive share of $2,667.60, less certain charges, not here important, informing each when so paid that it was his or her share in their father's estate; and these plaintiffs do each severally aver that, having the most implicit confidence in the rectitude of their said uncle, and believing that it was true that the sum so tendered was in fact all that they were entitled to (except the Mix lot, which was then in controversy and since paid these plaintiffs, except Sarah E. Hopkins), these plaintiffs accepted the same and gave receipts therefor.

But these plaintiffs aver that, being ignorant of the fraud, through the artifices of said trustees, which was practiced on them, that the receipt of the said several sums does not estop them from the enforcement of their equity to a fair and just division of their father's estate against said trustees, their heirs and volunteers; and the said plaintiffs do each severally agree that whatever sum, with interest, each may have so received is a just charge against the share of each plaintiff in the final division of the estate, and which they do hereby express their assent may be deducted from the same.

15. That the plaintiffs are informed and believe, and so charge, that subsequent to April 10, 1864, and prior to the 16th November, 1864, the date said trustees repudiated their trust by recording said deeds from Chapman to themselves as individuals, they had as trustees sold to *bona fide* purchasers for value portions of said real estate, for which they have received $10,500, the particulars of which these plaintiffs will prove when the case shall be referred to the auditor for account.

16. The plaintiffs are informed and believe, and so charge, that subsequent to the said 16th November, 1864, and prior to 22d December, 1875, the said trustees sold, jointly and individually, portions of the said real estate to *bona fide* purchasers, for which they have received $6,000, the particulars of which these plaintiffs

will prove when the case shall be referred to the auditor for account.

11 17. That the said trustee, George W. Hopkins, trustee as aforesaid, died intestate on the 22d December, 1875, leaving as his only children and heirs-at-law George N. Hopkins, said defendants, Elizabeth B. Luttrell, born Hopkins, Ira W. Hopkins, Mary E. Hopkins, and Cornelius Hopkins; that letters of administration on his estate were granted to said defendants, L. Freddie Hopkins and Thomas J. Luttrell; that said George N. Hopkins has since died, on Nov. 18th, 1881, having first devised, by way of executory devise, all his real estate to said defendant, Samuel C. Raub, as trustee for said defendant, Bettie Davenport, her heirs and assigns; that the contingency on which said devise was limited has happened, and the equitable estate in fee simple is invested in her, as all of which will more fully appear by reference to said will, hereto annexed (marked Exhibit Hopkins No. 9) and prayed to be read as part of this bill; that letters of administration on said George N. Hopkins' estate were granted to said defendant, Samuel C. Raub; that said Cornelius Hopkins has since died, on July 17th, 1883, having devised his entire estate as follows: one-half to said defendant, Mary E. Hopkins, one-quarter to said defendant, Elizabeth B. Luttrell, and one-quarter to said defendant, Ira W. Hopkins; that to said Thomas J. Luttrell letters testamentary have been granted as executor of said Cornelius Hopkins.

18. That these plaintiffs are informed and believe, and so charge, that after the death of said George W. Hopkins said John S. Hopkins filed his suit for partition of lot one, in square No. 94, and all of squares Nos. 95 and 96, in your honorable court, equity cause No. 5685, against the said heirs of George W. Hopkins, and that by which there was allotted in severalty, on November 12th, 1877, to said John S. Hopkins, lots 1, 2, 3, 4, and 6, in square No. 95, with improvements; lots 5, 6, 7, 8, 9, 10, and 11, in square No. 96, with improvements, and to the said heirs of George W. Hopkins, in severalty, lot 1, in square No. 94, with improvements; lot 5, in square

12 No. 95, and lots 1, 2, 3, 4, 12, 13, 14, 15, and 16, in square No. 96.

19. That subsequently the said heirs of George W. Hopkins filed their suit for partition in your honorable court (equity cause No. 5690) of the real estate allotted to them as set forth in the preceding paragraph, and also of square No. 111; that in said suit said Thomas J. Luttrell was appointed trustee, with power to sell certain lots to pay the debts of their ancestor, said George W. Hopkins, and who did sell, as trustee, to *bona fide* purchasers, lots for which he received $16,000, the particulars of which these plaintiffs will prove when the case shall be referred to the auditor for an account. After the payment of said debts there was allotted in severalty to said heirs as follows: to said Cornelius Hopkins, subdivision lot 11, in square 94, sub-lots 33, 34, 35, 54, 55, and 56, square 96; sub-lots 50, 51, 62, square 111; to Mary E. Hopkins, sub-lots 9 and 12, square 94, sub-

lots 2, 3, 31, 32, 45, 46, 47, square 96, sub-lots 43, 44, 61, square 111; to Elizabeth B. Luttrell, sub-lot 8, square 94; sub-lots 1, 37, 38, 57, 58, square 96; sub-lots 47, 48, 49, 60, square 111; to said George N. Hopkins, sub-lot 10, square 94; sub-lots 39, 40, 51, 52, 58, square 96; sub-lots 52, 53, 54, and 58, square 111; to Ira W. Hopkins, sub-lot 7, square 94; sub-lots 29, 30, 36, 48, 49, 50, square 96; sub-lots 45, 46, and 59, square 111, as the same are respectively recorded in the office of the surveyor for the city of Washington, D. C.

20. That these plaintiffs have been informed and believe, and so charge, that after the said partition suits of the said John S. Hopkins of the lots allotted to him, — sold a number to *bona fide* purchasers for and has received the sum of $50,000, and that the heirs of the said George W. Hopkins have sold nearly all of those allotted to them to *bona fide* purchasers, viz., all except sub-lots 14 and 15, square 94, and sub-lots 39 and 40, in square 96, and have received therefor the sum of $75,000, the particulars of which sales
13 these plaintiffs will prove before the auditor on an account to be stated; that the title of these purchasers is indefeasible, but that the purchase-money received, as alleged in paragraphs 7, 15, 16, 19, and 20, has been received by the respective parties as trustees for the shares these plaintiffs are respectively entitled to; that the trust attached to the land has been transferred to the funds received as purchase-money, and the same being in the hands of said trustees, their heirs, administrators, and devisees is answerable in equity in the place of the land which has been sold and for any deficiency of land to pay said indebtedness; that the said defendants are respectively responsible to the extent of the inheritance respectively received by them for the amounts received by their ancestors as well as for whatever they have sold themselves.

21. That the said John S. Hopkins, the other of said trustees, died on the 7th day of May, 1883, leaving said defendant, Bertha Hopkins, as his only child and heir-at-law, and said Esther E. Hopkins as his widow; that letters of administration on his estate have been granted to said Bertha Hopkins as sole administratrix.

22. That these plaintiffs do severally aver that they have within the last past few weeks discovered for the first time the following circumstances in the manner herein set out, namely: That when the said John S. Hopkins, trustee, induced his brother and *cestui que trust.*, William M. S. Hopkins, to convey to him his estate, as alleged in paragraph eight, the said John S. Hopkins charged the said William that he should not tell his wife, the said plaintiff, Sarah E. Hopkins, of his having made such deed, and threatened him that if he did his said wife would leave him and return to Baltimore to her father; that numberless times from that time to the date of his death the said John S. Hopkins inquired of the said William if he had ever informed his wife of the conveyance to him, and on every occasion urged him not to do so; that the said William, being
14 always poor and frequently in positive want for the absolute necessities of life, was constantly importuning the said John

S. Hopkins for his share of the estate and waiting for a division, when the said John S. Hopkins did pay to the said William at various times in all about nine hundred dollars and put him off by alleging that he was waiting for the property to rise in value, and when he sold that the said William would get his share. At other times when the said William would threaten to sue the said John S. Hopkins the latter would bluff him off by such statements that if he did sue he would not get a cent, but that he would give it to his wife, who had separated from said William, and that so it was, by intimidations, threats, and promises, the said William was always waiting to the hour of the death of the said John S. Hopkins in the hope that he would get his share of the estate; that when the said John S. Hopkins died unexpectedly, on May 7th, 1883, and had made no provisions for the said William, the said William began to seek the advice of counsel as to what were his rights, and after having consulted several without effect, at a considerable waste of time, finally placed his case, about the first of February last past, in the hands of Samuel L. Phillips, attorney-at-law; that the said attorney undertook the investigation of the case, and discovered for the first time from living disinterested witnesses that the said James Chapman had never paid one dollar of consideration for said land, but had bought the same for and on account of said trustees, and that the sale was fraudulent and void; that the said attorney discovered that the said William had conveyed his interest to said Ingle in trust for said plaintiff, Sarah E. Hopkins, his wife, and if any recovery was to be had the said Sarah E. Hopkins should be informed of her rights. The said attorney thereupon wrote a letter to said Sarah E. Hopkins, residing in Baltimore, Md., and who in a day or two after its receipt came to Washington, called on said attorney, and this plaintiff, Sarah E. Hopkins, avers was told for the first time in her life on the 5th of February, 1884, either of the conveyance by said William to said John S. Hopkins or the conveyance of William to said Ingle in trust for her benefit, or of the fraudulent practices of said trustees, as hereinbefore set forth, as to the purchase of said land, and the said Sarah E. Hopkins has thereupon authorized said attorney to bring suit to enforce her rights; that in order to secure further information, if any existed, the said attorney instructed the said William to call on his sisters and make an appointment with them to see him, said attorney, which the said William did do during the months of February or March, 1884, and at which interview the said William informed these plaintiffs, Elizabeth A. Early, Mary V. Wailes, and Alice G. Hall, of the discovery of witnesses who would testify that the said sales from said trustees to said Chapman, and said Chapman to said George W. Hopkins and John S. Hopkins jointly, and to said George W. Hopkins individually, were without consideration, fraudulent, and void, as hereinbefore set forth; and these plaintiffs aver that this was the first time in their lives that they or either of them had ever been informed or in any manner known of said fraudulent sales, or

had any reason to suspect that the same were not true and *bona fide;* that the said attorney called March 27th last past on these plaintiffs, Elizabeth A. Early, Mary V. Wailes, and Alice C. Hall, and said Emeline V. Lilburn, and they severally aver that they were informed by said attorney for the first time of the particulars of the fraudulent practices of said trustees in buying at their own sales through said Chapman, as hereinbefore set forth, but, on the contrary, aver that by the assurance of said trustees that the same were *bona fide;* by the suppression of the truth these many years; by the fact that they were always informed that the said trustees had plenary power under said will of their father; by the great confidence they had in the integrity of their said uncle; by their incapacity as females
16 entirely unused to business—these plaintiffs, Elizabeth A. Early, Mary V. Wailes, Alice C. Hall, and their sister, Emeline V. Lilburn, have uncomplainingly submitted to what they have often deplored as their ill-fortune, while another member of the family, their own brother, and his daughter, claiming through the same ancestor, was in possession of estates worth over two hundred thousand dollars; that these plaintiffs thereupon immediately resolved to enforce such rights as they were entitled to, and authorized said attorney to take the necessary legal proceedings; that this plaintiff, William B. Hopkins, was a child only five years of age when said fraudulent sale was made, and said plaintiff, Anna H. Hopkins, was not born for nearly five years afterwards, and that this plaintiff, William B. Hopkins, on the 31st day of March last past was for the first time in his life informed of the facts hereinbefore recited as to said fraudulent conveyance by said trustees and Chapman; the said Anna B. Hopkins is still an infant fifteen years of age; that Emeline V. Lilburn, the grantor of this plaintiff, Ida N. Stone, was present on March 27 last past at the interview of said attorney with her said sisters, and heard for the first time in her life that the said sales from said trustees to said Chapman and back to said George W. Hopkins and John S. Hopkins and George W. Hopkins individually were fraudulent and void for the causes herein set forth; and the said plaintiff, Ida N. Stone, does aver that down to said 27th day of March the said Emeline V. Lilburn knew nothing of said fraudulent practices of said trustees or either of them, but, on the contrary, discovered the same in the manner hereinbefore set forth; and the said plaintiff, Ida N. Stone, does aver that she was ignorant of the same down to April 7, 1884, the date of the conveyance to her, said plaintiff, by her mother, said Emeline V. Lilburn.

Whereby, if these plaintiffs shall prove these facts to the satisfaction of your honorable court, they allege that they have been
17 guilty of no negligence in the prosecution of their rights and are entitled to relief.

23. That these plaintiffs have been informed and so aver that there is yet unsold a large portion of said estate and in the possession of said defendants, namely, sub-lots four and six, in square 95;

subdivision lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 39, and 40, in square 96; subdivision lots 14 and 15, in square 94, and that the same are worth two hundred thousand dollars, and that the distributive share of each of these plaintiffs will amount to twenty thousand dollars.

Prayers.

Wherefore these plaintiffs pray that the said deeds from said trustees to said Chapman and from said Chapman to said George W. Hopkins and John S. Hopkins jointly, and to said George W. Hopkins individually, may be declared void and cancelled, and that the said estate is held by the defendants as heirs-at-law of said George W. Hopkins on the original trusts mentioned in said will of John Hopkins, deceased.

That the said estate may be divided as it was the duty of said trustees to have done.

That an account may be stated of the sums received, with interest, on all sales made by said trustees or either of them, or by any of the defendants, and also of what these plaintiffs or either of them have received, with interest, on said pretended division, and that these plaintiffs may be allowed, according to their respective interests, their shares of such sales, and that such sums found to be due to such of these plaintiffs may be declared to be a lien on the said real estate respectively held by them, the defendants.

That these plaintiffs may each have judgment and execution
18 for the sums found due to them, respectively, on said sales made by said trustees or either of them or by said defendants or either of them.

That an injunction may be issued restraining either of said defendants from selling any portion of said estate recited in paragraph 23.

That a receiver may be appointed to take possession of said premises and to collect the rents, issues, and profits thereof.

That this suit may operate as a *lis pendens* and notice to subsequent purchasers.

That these plaintiffs may have such other and further relief as the nature of their case may require.

That the following are the defendants to this bill, and against each of whom these plaintiffs pray the United States writ of subpœna, commanding them and each of them to answer the allegations of this bill, viz: Bertha Hopkins; Bertha Hopkins, administratrix of John S. Hopkins; Esther F. Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins, Samuel C. Raub, trustee for Bettie Davenport; Bettie Davenport, Samuel C. Raub, executor of George N. Hopkins; L. Freddie Hopkins, administratrix of George W. Hopkins; Thomas J. Luttrell, administrator of George W. Hopkins; Thomas J. Luttrell, executor of Cornelius Hopkins.

These plaintiffs do expressly waive all answers by said defendants and each of them under oath.

And these plaintiffs will ever pray, &c.

Answers of the Defendants.

25 The answers, joint and several, of Esther F. Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins, Thomas J. Luttrell, executor, defendants, to the bill of complaint of the above-named complainants, William B. Hopkins *et al.*

These defendants, by protestation, not confessing any of the matters in said bill contained to be true as the same are therein set forth, and reserving all right of exception thereto, nevertheless, for answer to so much and such parts thereof as they are advised it is material for them to answer, answer and say:

1, 2, 3, 4, 5, and 6. They admit the truth of the averments of the 1st, 2d, 3d, 4th, 5th, and 6th paragraphs of the bill, save and except the statement in the 2d paragraph that "L. Freddie Hopkins is a citizen of this District." The fact is the said L. Freddie Hopkins was deceased at the time said bill was filed.

7. Answering this paragraph of said bill, these defendants say it is true, as they are informed and believe, that the said George W. and John S. Hopkins accepted the trusts imposed by the will of *the will of* said John Hopkins and continued the latter's brick business down to May, 1864. For the contents of said will these defendants, for greater certainty, refer to the original or a certified copy thereof. The proper construction of said will they leave to the court, where, they are advised, it properly belongs. These defendants are informed and believe said executors between March 4th, 1863, and May 1st, 1864, sold certain lots of ground belonging to said estate, the particulars of which they are not advised, but they are informed and believe said executors duly accounted for and paid over to the parties entitled to the proceeds of said sales, and that this court will not after the great lapse of time reopen their account.

8. Answering this paragraph of the bill, these defendants, on information and belief, say it is not true that the conveyance of June 20, 1860, from said William M. S. Hopkins to John S. Hop-
26 kins was obtained by fraud or unfair means or while William's mind was in such a condition as to render him incapable of executing a valid deed or contract. On the contrary, these defendants, on information and belief, aver that said deed was executed and delivered by the said William at a time when he was in possession of his mental faculties and knew perfectly well what he was doing. As to the magistrates before whom said conveyances was acknowledged, they, too, are dead, but these defendants, upon information and belief, aver that they were both men of the strictest integrity and would not, for any consideration, have made the false certificate imputed to them, and that they did not make the alleged false certificate. The statement that complainants have been totally ignorant of said deed "until within two months past," contained in said paragraph, is false, and was made, as these defendants are informed

and believe, to give them standing in a court of equity. These defendants insist that said deed, absolute on its face, will not, after this lapse of time and the death of John S. Hopkins, the party charged with fraud in procuring it, be disturbed.

9. Answering this paragraph of the bill, these defendants say they have no knowledge of the matters therein stated except such as they derive from reading the same. Should the complainants deem the statement of said paragraph material, then these defendants require proof thereof.

10. Answering this paragraph of the bill, these defendants aver, upon information and belief, that the sale of May 10, 1864, referred to, was in all respects fair, and that the property brought all it was worth. These defendants deny that there was any fraudulent scheme or any fraudulent circumstances attending said sale; that said sale took place because the said Alice had attained the age of 18 years, the period for dividing the estate according to the provisions of the will, and because the children of the testator, eight in number, were eager to get their portions of their father's
27 estate; that said sale, at or about the time it took place, was made known by said executors to all parties interested, and they resided, may it please your honors, at the family residence, on square 111, very near the property in question. These defendants deny that James Chapman was fraudulently employed by said executors to bid at said sale. These defendants aver, upon information and belief, that the complainants knew the facts attending said sale at the time it occurred, viz., that Chapman purchased certain lots and squares of the property sold and subsequently conveyed the same to George W. and John S. Hopkins as individuals. The statement that complainants knew nothing of the sale to Chapman until recently is untrue, and was introduced into the bill by complainants to entitle them to favorable consideration in a court of equity, as these defendants are informed and believe.

11. Answering this paragraph of the bill, these defendants say, if it be true that George W. Hopkins made the statement attributed to him in relation to the *bona fide* character of the sales May 10, 1864, he spoke no more than the truth. These defendants again aver that there were no fraudulent circumstances attending the alleged sale of said property to Chapman; that it was fair, open, and public, as were the sales to other parties.

12. Answering this paragraph of the bill, these defendants admit the conveyances referred to, but deny that said conveyances or either of them were executed and delivered pursuant to any scheme of fraud on the part of said trustees or any one else. It is also admitted that said conveyances were at the dates alleged duly recorded in the proper office in this District. These defendants, upon information and belief, deny that said sales and transfers were or are void or that the trusts of John Hopkins' will remain unexecuted. On the contrary, they are informed and believe that the trusts of said will have been fully executed.

28 13. Answering this paragraph of the bill, these defendants deny any fraudulent scheme on the part of the trustees of John Hopkins' will to possess themselves individually of his estate to the prejudice of his heirs. Such an idea, if the complainants seriously entertain it, these defendants submit would not have occurred to them but for the change in the value of the property since the 10th of May, 1864. These defendants admit said executors and trustees accounted to the orphans' court of this District in March, 1865, for the profits of said brick business and the proceeds of the sale of John Hopkins' interest in the firm of John and George W. Hopkins, showing the sum of $22,131.46 for distribution, but they deny that this accounting was for the purpose of giving "semblance" of right to any fraudulent scheme on their part to possess themselves as individuals of said estate. These defendants are informed and believe that said executors in the matter of said accounting submitted to the court proper vouchers; otherwise they would not have obtained the credit shown on said account. These defendants deny all manner of fraud in connection with said accounting or that the court was without jurisdiction to pass the order of distribution referred to. On the contrary, these defendants are informed and believe that the real estate sold by said executors was partnership property, purchased with partnership funds by the said John and George W. Hopkins for the purpose of their business of brick-making during the years 1849, 1854, and 1855, and was therefore properly treated by said executors as personal estate. These defendants are informed and believe that the orphans' court was the proper forum in which to administer the proceeds of the sale of such real estate and order distribution of the surplus to those entitled to receive the same. These defendants submit that the complainants, after receiving their respective shares of said surplus, are estopped after this great lapse of time to reopen this account, and these defendants on this point pray the same benefit and advantage
29 as though they had specially pleaded said account in bar of the relief sought in said paragraph.

14. Answering this paragraph of said bill, these defendants admit the alleged distribution, and that so many of said complainants as were distributees of John Hopkins' estate severally receipted to said executors for the amounts paid to them respectively. These defendants again deny that there were any circumstances of fraud or concealment attending the account rendered by said executors in March, 1865, which they insist was open and public. The statement that said executors were guilty of fraud and that the implicit confidence of the complainants in the rectitude of their uncle and brother was in anywise abused is sheer pretence, deliberately made to enable the complainants to evade settlements made by themselves nearly twenty years ago.

15. These defendants deny that said trustees subsequent to May 10, 1864, or any other time, repudiated the trust of John Hopkins' will. On the contrary, said executors faithfully executed the

same and paid over all moneys which came into their hands to the parties entitled to receive the same.

16. These defendants admit that said George W. and John S. Hopkins, between November 16, 1864, and December, 1875, sold a number of lots in said square 110, the particulars of which they are not advised, and they deny the right of the complainants to the account proposed in this paragraph of the bill.

17. The matters stated in this paragraph of the bill are admitted.

18. As to the matters stated in this paragraph of the bill, we refer to the record of the partition suit mentioned.

19. Answering this paragraph of the bill, we admit that Thomas J. Luttrell, as trustee in said partition suit 5690, sold a number of the lots assigned to the heirs of George W. Hopkins, but whether his sales amounted to $16,000.00 we do not know, and refer to the reports of said trustees in said cause for more accurate information on the subject. We deny the right of the complainants to the account proposed in this paragraph.

30

20. Answering this paragraph of the bill, we admit, on information and belief, that after the partition suit between John S. Hopkins and the heirs of George W. Hopkins the said John S. Hopkins sold a number of the lots assigned to him, but we deny the right of the complainants to an account in respect thereof, or that the receipts of said John S. Hopkins on account of said sales was in trust for the complainants or that they are in anywise interested therein. We also deny, on information and belief, the existence of such facts as justify the conclusions of law contended for in said paragraph.

22. Answering this paragraph of the bill on information and belief, we deny the threats and acts of intimidation alleged to have been used by John S. Hopkins toward his brother William to induce the latter to execute the deed of June 20, 1860, referred to in paragraph eight of the bill. On the contrary, we are informed and believe and so aver that John S. Hopkins was always kind and considerate to his brother William, when his other brothers and sisters were disposed to treat him as an outcast owing to his dissipated habits. We deny that in taking said deed John S. Hopkins took any advantage of the mental or pecuniary condition of his brother William. We are informed and believe that the alleged mental condition of the said William has been greatly magnified and exaggerated by complainants in order to give color to their false pretense that the deed of June 20. 1860, was procured by fraud and unfair means. The claim that William and the complainants were ignorant of said deed until within the past two months is purely fictitious, and was introduced into the bill, we are informed and believe, in order to impart vitality to a stale claim and to excuse complainants themselves for their long delay in the assertion of rights adverse to these defendants until George W. Hopkins and John S. Hopkins, the persons charged with misconduct, are both dead. In reference to the immaterial statement of the

31

interview between the complainants and their counsel, Mr. Phillips, these defendants have no information on the subject than that obtained from reading the account of said interview, but believe the statements made by the complainants to their counsel against a dead brother to be wickedly false, and to have been made for no other purpose than to impose upon this court a false show of diligence, and thus obtain its favorable consideration.

23. Answering this paragraph of the bill, we say we do not know but that the portion of John S. Hopkins' estate unsold is correctly described, but we deny, on information and belief, that the complainants have any interest in it.

And now, having fully answered, we insist that the trustees of John Hopkins' will were guilty of no misconduct in office an d that they mingled kindness with the administration of their trust. We submit that the circumstances of this case are such as disentitle the complainants to the relief prayed, and ask to be hence dismissed with our proper costs in this respect most wrongfully sustained.

The Answer of Bertha Hammond, Sued as Bertha Hopkins, to the Bill of Complaint in the Above-Entitled Cause.

In answer to the said bill of complaint, I say:

1, 2, 3. I admit the allegations in the first, second, and third paragraphs of the bill. I am informed and believe that the defendant, L. Freddie Hopkins, was deceased when the bill in this cause was filed.

4. I admit *the* John Hopkins on or about the 23d day of November, 1858, executed his last will and testament, and I say that the same was duly proved in the orphans' court of this District on or about the 4th of December, 1858, and is now of record in the office of the register of wills of this District, and for the contents
32 and construction of the said last will and testament I refer thereto or a duly certified copy thereof.

5. I am informed and believe that the allegations of the fifth paragraph of the bill are true, and admit the same.

6. I am informed and believe and admit that Isaac H. Hopkins and Levin Hopkins, two of the children and heirs-at-law of the said John Hopkins, died intestate and without issue, and that George W. Hopkins died at the time alleged, leaving the alleged children and heirs-at-law, and that they were of the alleged ages. As to the allegation of the conveyance by Emeline V. Lilburn to her daughter, Ida M. Stone, I have no knowledge or any information save that contained in the bill, and I do not admit the said allegation. I admit that John S. Hopkins, my father, died on the 7th of May, 1883, leaving me his only child and heir-at-law. I aver that at his death I was twenty-four years of age. I further aver, on information and belief, that the said Levin Hopkins died in the year 1863 and the said Isaac Hopkins in the year 1868. I further aver that

since the service of process in this cause I have intermarried with Thomas V. Hammond.

7. I am informed and believe and admit that George W. Hopkins and my father duly qualified as executors under the last will and testament and acted as executors and trustees thereunder, but of the extent and particulars of such action I have no knowledge or information. I am informed and believe that they carried on the brick-making business and made sale of the real estate which at and before the death of the testator was held in common by the said George W. Hopkins and the testator. I neither know anything, being at that time five years old or under, nor have I any information or belief touching the alleged sale, at various times prior to the 1st of May, 1864, of portions of the property of the said testator, but, on information and belief, I aver that all moneys received by the
33 said executors and trustees were duly accounted for and paid to the parties entitled and receipts given by them in full settlement; and I am advised that after such accounting and payment and receipts this court will not reopen the same, especially after the great lapse of time and death of both of the said executors and trustees; and as to so much of the said bill as seeks relief on the ground of moneys received and not accounted for, I pray the same benefit as I specially pleaded the said accounting and payment and receipts in bar of such relief.

8. Further answering on information and belief, I deny that, as alleged in the eighth paragraph of the bill, the trustees ever meditated any scheme by which they should by artifice and fraud become seized of the trust property discharged from the trusts subject to which it was held, or that in pursuance of such scheme or any scheme of fraud the said John S. Hopkins at the time alleged or at any time induced the said William M. S. Hopkins in the manner alleged or in any manner to make the alleged conveyance, or that the said William was mentally incapable of making the alleged deed, or that while mentally incapable he did, at the instance and under the dictation of the said John S. Hopkins and while under his control, sign the alleged deed, or that the said William M. S. Hopkins at the command and direction of the said John S. Hopkins did sign, as alleged, the name of Sarah E. Hopkins, his wife, or did obtain the alleged certificate of acknowledgment.

I believe and aver the allegations of the bill to which the foregoing denials relate to be a tissue of falsehoods. I admit that the records show a conveyance from William M. S. Hopkins and wife to John S. Hopkins, dated the 20th of June, 1860, whereof "Exhibit Hopkins No. 2" is a true copy, and the delivery of the original to the grantee on the 25th of January, 1864. I have diligently searched the papers of my late father for the said original, but have been unable to find it, and for that reason and none other do not
34 produce it. I neither know nor am informed nor believe that there is any other place where the said original would be likely to be found, save among the said papers. I am informed

and believe that the said deed, absolute on its face, was availed of by my father solely as a security and for the protection of his brother, the said William M. S. Hopkins, who was addicted to gross intoxication, and that the full share of the latter in the estate of his father was duly accounted for and paid to him. As to the consideration of the said deed, I have no information or belief.

I further deny the allegation of the ignorance of "each and all of the plaintiffs" as to "each and all" of the facts alleged in said paragraph and referred to by the said allegation, except in the sense that the facts referred to were mere inventions, and hence could not be known to the plaintiffs. I will prove that if the said facts had had any existence in truth they must have been known to some of the plaintiffs.

9. I have no knowledge, information, or belief, save that derived from the bill, as to the allegations contained in the ninth paragraph, and call for proof if said allegations are important to the plaintiffs' case.

10. Further answering on information and belief, I deny that in pursuance of the alleged fraudulent scheme or any fraudulent scheme the said trustees caused the property to be advertised for public sale on the 10th of May, 1864. On the contrary, I say that the said trustees acted in good faith, and that the said property was advertised because the said Alice having attained the age of eighteen years, the period for making division of the estate had arrived according to the provisions of the will and because the children of the testator, of whom eight were then living, were eager to get their shares of the estate. I have no information or belief as to whether "Exhibit No. 3" is a true copy of the advertisement, and hence call for proof. I deny that the said trustees fraudulently employed James Chapman to attend the said sale and bid for the trus-
35 tees secretly and fraudulently. I am informed and believe that the said Chapman is now deceased. I admit that at the sale he purchased the alleged pieces of the property at the prices alleged, and that the residue was sold to other parties.

11. As to the allegations contained in the eleventh paragraph, I have no information or belief. If it be true that the said George W. Hopkins made the statement attributed to him in relation to the *bona fide* character of the sales, he said only what, as I am informed and believe, was the truth.

12. I admit that the conveyances alleged in the twelfth paragraph were made at the times alleged, and that the same were recorded at the times and in the books alleged.

I further admit the exhibits filed with the bill and marked "Exhibit Hopkins No. 4," "Exhibit Hopkins No. 6," and "Exhibit Hopkins No. 7" to be true copies of the original conveyances.

Among the papers of my late father I find the two conveyances first mentioned in said paragraph, and produce and file the same herewith, marked "B. H. Exhibit No. 1" and "B. H. Exhibit No. 2." I deny that the said conveyances were made in pursuance of the

alleged or of any fraud. I further deny that the said purchases by Chapman were for the benefit of the said trustees as individuals without the knowledge or consent of the parties interested in the estate, or that the conveyances were fraudulent and void, as alleged, or that the trusts of the said will have never been executed and still subsist, as alleged.

Further answering, on information and belief, the matters alleged in the three foregoing paragraphs, I say that the said George W. Hopkins and the testator, John Hopkins, were partners in trade for years before the death of the latter, and that their business consisted in the manufacture of bricks, and that the property mentioned was purchased in the years 1849, 1854, and 1855 for the purposes of their said business and used for such purposes so far as required
36 until the death of the said John Hopkins, and afterwards in the pursuance of the provisions of his last will and testament until the youngest child, Alice, had attained the age of eighteen years, which event occurred in April, 1864; that until such time the business of brick-making had continued as before the death of the testator, in pursuance of the provisions of his will, but under the authority thereby conferred it had been necessary to dispose of some few pieces of ground, the purchase-money whereof was duly accounted for; that upon the happening of such event, the period fixed by the will for the division of the estate, the children of the said testator were eager to obtain their respective shares of the estate; that it was well known to all the said children that the said George W. Hopkins and John S. Hopkins proposed to continue the said business, and to that end to purchase the necessary parcels of ground at the prices at which the same should sell at public auction; that the said children were not only willing but desirous that the business should be continued and the necessary purchases made, their only interest being in obtaining the best prices; that in order to obtain such prices the whole title to the property was sold, as well the interest of the said George W. Hopkins as of the testator; that the said sale of property — in separate parcels and was in all respects fairly conducted, and that the prices obtained were the full value of the property; that the said George W. Hopkins and John S. Hopkins bought with the full knowledge and consent of the said children and duly accounted for the purchase-money; that at the time of the sale *of* the property, except where the residence of George W. Hopkins stood, in square 111, was a common, the streets of the city not having been opened, and the kilns for burning bricks standing in square 94; that there were no circumstances of suppression or concealment, but the deed to James Chapman placed upon record on its face showed only a nominal consideration, and that all parties in-
37 terested well knew that said Chapman bought for the benefit of the said George W. and John S. Hopkins, and the latter after the said purchase continued the said business with the knowledge and acquiescence of the said children of the testator until the death of the said George W. Hopkins, in 1875.

I further say that the present suit owes its origin to the great increase in the value of the property, whereby a temptation was presented too strong—it may be—for the honesty of the plaintiffs, and I am advised that after the lapse of twenty years, less only a few days, and the death of the said George W. Hopkins and John S. Hopkins, as well as of the said Isaac Hopkins and George W. Hopkins, two of the said children, who were fully conversant with the facts, and after the loss of evidence incident to the great lapse of time, and in the absence of any pretence that the prices paid for the property were inadequate, or that there were any circumstances of suppression or concealment, this court will declare the claim set up in this suit stale and such as ought not to receive the countenance or consideration of a court of equity.

13. Further answering on information and belief, I admit that on or about the 28th of March, 1865, the said executors and trustees filed in the orphans' court of this District an account, whereof "Exhibit Hopkins No. 3" is a true copy, and that thereupon the alleged order was passed by the court. I deny that the said account was filed in pursuance of the alleged or of any fraudulent scheme whatever or in order to give a semblance of right to the alleged or any fraudulent conduct, and aver that in filing the same the said executors and trustees were fulfilling their duty as they understood it. I deny that the said order was obtained under the circumstances alleged and call for proof, and I am advised that the parties who took the benefit of the said order cannot be heard in impeachment of it after the lapse of nearly twenty years and the death of the said executors and trustees, and aver that the said parties well
38 understood the nature and particulars of the said proceedings. As to the alleged want of jurisdiction in the orphans' court, I submit the same to the court where, I am advised, it belongs. As to the filing of the account, nearly seven years after the death of the testator, I aver that the same is fully explained and the falsity of the insinuation of the bill is fully established by the provisions of the said last will and testament.

14. I admit that the alleged distribution was made and that the parties interested receipted for the amounts paid them respectively. As to the other allegations in this paragraph, I am informed and believe that the same are sheer pretences to enable the plaintiffs to evade the settlements deliberately made by themselves or those under whom they claim nearly twenty years before the bill was filed and after the deaths of the said trustees and executors, and I deny the sufficiency of the said allegation in law as well as their truth.

15. I have no information or belief as to the matters alleged in the fifteenth paragraph. I repeat the defence made in my answer to the seventh paragraph, that all moneys received by the said trustees and executors were duly accounted for and paid over and receipts given, and pray the same benefit as if I had specially pleaded the same.

16. I deny that the plaintiffs are entitled to any such account as proposed by the sixteenth paragraph.

17. I admit, as alleged, the death of George W. Hopkins, leaving the alleged children and heirs-at-law and the alleged grant of letters of administration. I further admit, as alleged, the death of George N. Hopkins and the grant of letters of administration upon his estate. I have no knowledge, information, or belief as to his will or the alleged effect thereon of any events which have happened, and I submit such matters to the court when the same shall be duly proved. I admit the alleged death of Cornelius Hopkins, leaving a last will and testament and the alleged grant of
39 letters of administration upon his estate. As to the contents and construction of said last will and testament, I submit the same to the court when the said last will and testament or a duly certified copy thereof shall be produced.

18. As to the suit and proceedings therein alleged in the eighteenth paragraph, I refer to the record or a duly certified copy thereof when produced.

19. I answer as I have answered the eighteenth paragraph.

20. I have no information or belief as to the alleged sales by my father or George W. Hopkins nor of the sums received thereunder. I deny the right of the plaintiffs to the account mentioned.

21. I admit the allegations of the twenty-first paragraph.

22. I have no knowledge nor any information other than that afforded by the bill as to the alleged declaration on the part of John S. Hopkins, my father, to William M. S. Hopkins to deter the latter from informing his wife, Sarah E. Hopkins, of the deed from him to the said John S. Hopkins, or of the alleged inquiries made "numberless times" as to whether such information had been given, or of the declaration alleged to have been made by the said John S. Hopkins to the said William M. S. Hopkins when importuned for payment or used by the former to the latter to "bluff him off" when the former was threatened with suit. I believe the said allegations made for the first time against a dead brother are utterly and corruptly false. I aver that my father was in his relations to the said William M. S. Hopkins a kind, affectionate, and just brother, and that in him the latter, when treated by others as a vagabond and outcast, owing to his habits of dissipation, uniformly found a protector and friend. Neither have I any knowledge nor any information, save from the bill, of the alleged discoveries by the said Samuel L. Phillips of facts which well nigh twenty years before were placed upon record by the very parties who are now assailed,
40 or of the other facts particularly detailed in order to show due diligence in instituting this suit.

23. As to all the allegations contained in this paragraph, saving only the immaterial allegations as to the employment of counsel and what such counsel said and did and others of like character, I believe the same to be wickedly false and resorted to by the plaintiffs as affording some colorable pretext whereby they suppose I can

be despoiled of my patrimony; and as to all such material allegations I demand strict proof.

And, having fully answered, I pray to be hence dismissed with costs, as in duty bound, etc.

Answer of Bettie Davenport.

The answer of Bettie Davenport states that she has no personal knowledge of the various matters of history recited in paragraphs of the bill from one to sixteen; admits the facts in paragraph seventeen of the bill. The remaining paragraphs of the bill she has no personal knowledge. Replications were filed to the answers.

46 *Opinion of Mr. Justice Merrick in the Special Term of the Court Below.*

(Stenographically reported by Mr. E. D. Easton.)

I have given a large share of reflection to this cause on account of its intrinsic importance and on account of the careful elaboration of the testimony and the exhaustive arguments on the facts and the law by counsel on both sides, extended over six or eight days of the court's sittings.

John Hopkins died in the year 1858, having by will devised all his real and personal property to his brother, George W. Hopkins, and his son, John S. Hopkins, as executors and trustees to manage the same until his youngest daughter, Alice, should reach the age of eighteen years, at which time his property was to be sold and the proceeds of sale to be divided by the executors and trustees amongst his children.

The testator and his brother, George W. Hopkins, had been for many years engaged as partners in manufacturing and selling bricks, and he directed by his will that the partnership should be continued until the time fixed in the will for sale. The brick business was carried on upon two unimproved squares of ground, which, together with all the other real estate devised, was held by the decedent and his brother George as tenants in common, and upon another of the parcels of the property thus held in common the brother, George, had his own residence.

Under the powers of sale expressed in the will the executors and trustees sold from time to time certain lots for the support of the family and other purposes, in regard to all which there is no controversy. The family of the decedent consisted of several sons, who were grown men, some engaged in active business, and of several daughters, married and single, of mature age and settled in life.

Upon Alice's arrival at eighteen years of age, in the month of April, 1864, pursuant to the provisions of the will, the executors and trustees advertised the property for public sale and sold it.

Part of the property was sold in separate lots to various bidders. The two squares of ground occupied as a brick-yard were not put up in separate parcels, but were offered as a whole and struck off to one James Chapman. The same thing was done with the
47 property which was occupied as a residence by George W. Hopkins. These properties were bought by Chapman for the executors and trustees, and were subsequently conveyed by Chapman to them. There is no dispute about the fact that he bought those parcels at the time on behalf of the trustees. Before the sale the purpose of the trustees to buy those parcels was fully talked of amongst the members of the family. There was no secret made of the matter. All the parties in interest were at the house of their uncle, George W. Hopkins, before and on the day of the sale. The sale was conducted in their view, its results were made known to them on the day of sale, and the matter was fully talked over amongst the various members of the family circle at the time and subsequently, and there was no expression of dissatisfaction with the prices, the manner of the sale, or with the circumstance that the trustees had bought on their own account the designated parcels; and the said trustees openly used and occupied the property purchased by them as their own from the time of the sale, continuing for some time to work the brick-yards, and George W. Hopkins continuing throughout the remainder of his life to occupy the dwelling as his family residence. In due season there was a report to the orphans' court, an account stated, and the proceeds of the sale and of all other assets were distributed to the several parties in interest, who gave receipts therefor. Subsequently the proceeds of the sale of part of square 66 came into the hands of the trustees, which proceeds were divided between George W. Hopkins and the devisées of John, it appearing that this property had been held by the brothers years before and used by them as partners in the purchase and sale of wood brought in vessels from the lower Potomac, and subsequently, to some extent in connection with the brick business. The share of the decedent's children was apportioned amongst and receipted for by them. George W. Hopkins, the brother, died in the year 1875. Some years after his death the parcels of property purchased by the two executors at the sale were divided, under a decree of this court, between his heirs and John S. Hopkins, the survivor.

In the year 1883 John S. Hopkins, the surviving trustee, died.

In the month of April, 1884, nineteen years and nearly eleven months after the sale of May 10th, 1864, the complainants in
48 this case filed their bill to set aside the sales made, as already described, upon the double ground that they were fraudulent and void in law and fraudulent in fact generally and specifically for the reason that the property was sold in bulk and not in separate parcels and for prices lower than the prices realized for the other parcels at the same sale.

It is undoubtedly true that in many cases a court will set aside a sale when the property has not been subdivided so as to ensure the

greatest competition and the best prices. It is also true that it was a very common practice in this city prior to and at the time of the sales in question to sell squares and parts of squares without subdividing them when the property was situate beyond the settled parts of the city, and in some cases that manner of selling was preferred, because often such outlying properties could only be sold to persons having some capital, who would purchase on speculation and with a view to hold until the tide of improvement should reach the neighborhood and there should be created a demand for separate lots for occupancy by small proprietors. The surrounding circumstances and considerations affecting the topographical situation of the property, as, for example, whether the grounds were level or broken, whether streets were laid out near by the property or not, very often controlled the manner of sale, so that no absolute rule or practice can be said to have prevailed; and, besides, in this particular case there is the evidence of at least one witness, Mr. Raub, a relative to the parties concerned, cognizant of all the circumstances of the sale, who testifies that, in his opinion, the property brought its full and fair value.

On the other hand, in the majority of cases it may be conceded that property was likely to produce higher prices if it was subdivided, because the number of competitors, of course, would be greater in proportion as the amounts of capital required for such purposes would be smaller and within the reach of a larger number of persons.

Such is the nature and character of this sale, to all appearances fairly conducted. The auctioneer who conducted that sale is still alive. He has no memory whatsoever that there was anything wrong in the conduct and manner of the sale. The prices are impeached, therefore, in regard to this property, which was sold in gross, solely upon the ground that, probably, if the property had been sold in detached portions the prices would have been larger,

49 as they were larger, relatively, for other portions of property purchased; but in that same connection there are these considerations to be borne in mind, in view of the question of imputed fraud growing out of that form of sale, to wit: That one of the two fiduciaries himself was a tenant in common of this entire property. He not only bore the relation of tenant in common to the property, but he also bore the relation of surviving partner to this property, which was part of the assets. He had in those aspects of his relation, in the eye of a court, certainly so far as it bears upon the question of fraud, some claim to become the purchaser himself and some claim to become the purchaser of it in the form and manner in which it had been used and enjoyed by himself and his copartners, to wit, as an entirety, with a view to the conduct of the particular business, and which business could not antecedently nor could it subsequently be conducted as an entirety or at all at that place without ownership in the whole of the property which had been used for that purpose. Those circumstances, I think, are cir-

cumstances important to be borne in the mind of the court in weighing the question of actual fraud on the part of the fiduciaries in thus purchasing this property *in globo*.

They then proceeded to sell, and sold, buying in this brick-yard property and buying in the domicile which had been previously used and occupied by the surviving partner, who purchased it in the name of himself and his cotrustee, not in their names ostensibly, but in the name of one Chapman, who afterwards conveyed it to them. It was understood and conceded that the purchase was made on their behalf. This occurred in the month of May, 1864. All the family and a number of the relatives of the family were there at the time. All who are now contestants in this cause—every one of them, as far as I remember—were there present and had knowledge of the sale being conducted. They had knowledge, by open and undisguised conversations in the family, for some time preceding the sale of the purpose of the trustees to purchase those parts of the property for their own use. They had knowledge imparted to them immediately upon the sale and subsequently to the sale by conversations in the family, by full communications on the part of the trustees, and by interchange of conversations among themselves that the property was intended to be disposed of and had been disposed of in that particular mode. They were all content with what was done. They had, as they say, implicit confidence in the integrity of the trustees. They were satisfied with the result. There was no complaint made in respect to it anywhere.

Soon after that the trustees, having been both executors and trustees under the will, settled an account in the orphans' court, in which they charged themselves with the entire proceeds of these sales and made distribution accordingly among the parties, and the receipts of the respective parties for their distributive shares were taken and filed, as I understand it, in the orphans' court. There was never a whisper of suspicion at any time with regard to these transactions. As I have stated, there was no concealment at all at the time or subsequently of these transactions. If there had been no public statement of it the manner of the thing was so publicly conducted, the muniments of title and records of what had been done were placed upon the public memorials in the orphans' court and in the land-record office, so that any and all persons who had chosen to take the trouble to make the slightest inquiry upon the subject would have been able to ascertain precisely what had been done.

Things remained in that predicament, with the intermediate settlements and payments for some minor parts of the property, which need not be adverted to at this moment, until both the trustees had died; until after the property which they had purchased had been partitioned, under proceedings in this court, between them and the respective parties claiming under them or one of them, and until, finally, the last trustee died, in the year 1883. Considerable time elapsed after his death.

On the 8th day of April, 1884, nineteen years and nearly eleven months from the date of the transaction, a bill in equity is filed to impeach these proceedings upon the ground that the purchases made by the trustees were fraudulent in law and fraudulent in fact, and therefore should be set aside by a court of chancery. That was not done until after the result of great civil commotions and an extraordinary condition of prosperity supervening upon the happy adjustment of those civil commotions. The value of property in this city had reached, compared with what it bore at the date of these transactions, a price that may be called almost fabulous—more than fifty times the value of the property at the time of the sale. It is worth about $3 per foot, while it sold, at the highest prices,
51 for 10 or 12 cents a foot at the time of the transaction now impeached. A great deal of it has passed into the hands of other parties.

The question is presented to this court now, nakedly, upon the facts of the case, whether a court of chancery, after such a lapse of time, after such a change of circumstances, after the intervention of temptations of greed so large they might exhaust the utmost ingenuity in piling up suspicion into conclusive proof of an antecedent fraud, will set aside that transaction. The question then reduces itself to the naked question whether the doctrine of a court of chancery, with regard to the necessity of the repose of society, is not sufficient to prevent the opening of this inquiry under these circumstances. The doctrine of the court of chancery in these respects divides itself into two branches. So far as constructive fraud arising out of a dealing between a trustee and his beneficiary immediately is concerned, and so far as the question of fraud arising out of a dealing by a trustee with an intervening person imposed for the purpose of completing the legal title to the trustee is concerned, that is one class of cases. The other is where there had been a case of actual fraud and concealment accompanying and characterizing the fraud perpetrated by the trustees upon those who have been confided to his care and guardianship. In the latter class of cases, where there has been actual fraud and concealment, the court of chancery knows no limit of time in which to interpose its retributive justice, only this, that when the fraud has been fully developed and made known to the parties, if they then sleep unduly upon their rights, the doctrine of laches and the necessity of repose of society applies to that class of cases as well as to the former; but where there has been fraud and concealment the court of chancery is extremely liberal, even after the discovery of the fraud, in allowing the beneficiary the amplest time to vindicate his rights. With regard to the other class of cases, where there has been no actual fraud, no fraud in fact, as distinguished from imputed fraud in law, the single consideration is whether the parties have unduly slept upon their rights. The general proposition is that where they have unduly slept upon their rights they shall not be entitled to redress. What is the measure of that neglect or

torpor on their part has never been adjudicated definitely as an arbitrary rule, nor can it ever be, but each and every case must rest upon its own intrinsic merits and its peculiar cir-
52 cumstances and surroundings. If the party, in view of all the facts of the case, has slept upon his rights, a court of chancery will not intervene; and in measuring laches there are two extremely important considerations always taken notice of by a court of chancery which limit and narrow the measure of time, which otherwise would be liberal. Where there has been no change of circumstances between the parties and no change with reference to the condition and value of the property a court of chancery will run very nearly, if not quite up, to the measure of the statute of limitations as applied in analogous cases in a court of law; but where there has been a change of circumstances with reference to the parties and the property, and still more where death has intervened, so that the mouth of one party is closed and those who represent his interests are not in a predicament to avail of the explanations which he might have made, out of the charities of the law and in consideration of the fact that fraud is never to be presumed, but must always be proved and proved clearly, the courts limit very much in such cases the measure of time within which they will grant relief, because the presumption comes in aid of the dead man that he has gone to his account with a clear conscience. In this case one of these trustees, the survivor, remained in active life and energy for nineteen years after the alleged technical fraud is supposed to have been committed. There was no challenge during that time of the transaction. Had there been the law has a right to presume and does presume that he would have had opportunities of explaining these transactions and vindicating himself, which opportunities are now lost. The counter-presumption now arises that there has been delay with the view to have the undue advantage of evidence on one side no longer capable of explanation on the other.

This is this case stripped of all the surroundings with reference to it—stripped of all the imputations and suspicions, piled one upon another with artful ingenuity, arising out of a number of minute circumstances, no one of which has in itself, apart from others, any significance. The effort has been made, I say, under such circumstances, to impute fraud.

But it is very remarkable that, while the circumstances of themselves do not carry any persuasive evidence of fraud to the trained judicial mind, the parties themselves who are impeaching the transaction, the surviving children who had knowledge of what
53 occurred, in their evidence in this cause and under all the temptations to strain or overtop their testimony, do not to-day impute any actual malversation to either of the trustees. The utmost they say is that if they have rights they want them. They never did call in question in the lifetime of the trustees the integrity of the trustees; they do not affirmatively call it in question to-day. They simply say at the uttermost that if they have

rights, as has been suggested to them, in regard to the possibilities of a legal administration of a trust in the manner in which I have stated they want those rights. Now, under all these circumstances—with all this lapse of time, with all the knowledge they had then and there while the transactions were fresh, with all the temptations now in their own minds to pervert the facts—there is no one of those who are at all reliable in testimony—and I do not include W. M. S. Hopkins in this remark—who ventures to impute actual fraud to the trustees whose estates they are now calling in question. Is it possible, under such circumstances as I have detailed, that a court of chancery, in view of a technical rule made for the prevention and guarding against fraud, which technical rule is at the same time so qualified and carefully hedged in as to prevent its operating injustice against the parties—is it possible that, under such a rule and under such a state of the case, the parties can come into a court of chancery and expect to have proceedings ripped open and themselves enriched at the expense of parties who innocently have nursed and taken care of this property and under whose guardianship and watchfulness it has been brought up to the value which it now maintains in the markets of the country? It seems to me that it would be a reproach to justice. It seems to me that it would be imperiling the rights of every citizen. It seems to me that it would be trampling upon all the security which the written muniments of title afford to people who deal with property and who own and improve it to entertain this case under these circumstances.

Counsel have manifested great zeal, and they deserve great credit for searching to the bottom of this case; but, with all the search they have been enabled to make, the case stands just as it did without their search and without any evidence—upon the naked proposition: Will a court of chancery, at the end of nineteen years and nearly eleven months, upset a transaction on account of a
54 technical rule made for the security of beneficiaries in the absence of actual fraud? There is no case in the books which goes to any such extent, while all the cases say that if the thing is done in season with due diligence, promptly, and before a change of circumstances the court of chancery, on account of the general doctrine and policy of the land, will set aside the transaction without any inquiry at all, because it will presume it to be wrong and, as a matter of policy, will not allow it to stand; but if it has occurred under these circumstances, under the sanction of time, and more especially if the strong seal of death has been put upon the transaction, the court of chancery stays its hand and says the parties are not entitled to relief.

I only pronounce the words of wisdom, garnered up by the sages who have entertained chancery jurisdiction for ages, in saying that this bill must be dismissed with costs.

Decree at Special Term.

This cause, coming on to be heard at this time, was argued by counsel for the respective parties and submitted. Upon consideration thereof it is, this 7th day of March, 1887, ordered, adjudged, and decreed that complainants' bill, with the amendments thereto, be, and the same is hereby, dismissed with costs.

By the court:

WM. M. MERRICK.

Decree in General Term.

55 In the Supreme Court of the District of Columbia, Holding a General Term. In Equity.

Filed Jul. 11, 1888. R. J. Meigs, clerk.

WILLIAM B. HOPKINS *et al.*
vs.
BERTHA HOPKINS *et al.* } No. 8953.

This cause came on to be heard on appeal from the decree of the supreme court of the District of Columbia, holding a special term as a court of equity, and the same was heard on bills, answers, replications, exhibits and proofs, and arguments of counsel, and duly considered by the court.

And it appears to the court that John Hopkins by his will devised to George W. Hopkins and John S. Hopkins, as trustees, the one-half undivided interest in the following real estate situate in the city of Washington, District of Columbia, as averred in said bill, namely, original lot numbered one (1), in square ninety-four (94), squares ninety-five (95), ninety-six (96), one hundred and ten (110), and one hundred and eleven (111), in trust (among other things), upon the arrival of his daughter Alice to the age of eighteen years, which would occur on or about the first day of May, 1864, his estate of every kind should be divided by said trustees among his children.

2nd. That under and by virtue of the provisions of said will and the said trust thereby created the complainants, as specifically set out in the bills filed in this cause, were, at the time set for
56 said division, entitled, with said John S. Hopkins, as set forth in said bills, to the undivided one-half interest in said real estate.

3rd. That on the 10th day of May, A. D. 1864, the said trustees pretended to sell said premises at public auction; that in making said pretended sales they caused said lot numbered one (1), in square ninety-four (94); the whole of squares ninety-five (95) and ninety-

six (96), and subdivision lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), and twenty-two (22), in square numbered one hundred and ten (110), to be bid off by one James Chapman, as their agent, for their joint benefit; that the said Chapman made said bid for said trustees; that on the said 10th day of May, A. D. 1864, the said trustees pretended also to sell said square numbered one hundred and eleven (111) at public auction; that in making said pretended sale the said George W. Hopkins, trustee as aforesaid, caused the whole of said square one hundred and eleven (111) to be bid off by said James Chapman, as his agent, for his own benefit; that said Chapman made said bid for said trustee; that said Chapman paid no purchase-money or consideration for said premises, or either of them, and conveyed the same according to the afore-recited bids to George W. Hopkins and John S. Hopkins jointly, and to George W. Hopkins individually, without any consideration therefor whatever from them or either of them.

4th. That since the conveyances by the said James Chap-
57 man to said George W. Hopkins and John S. Hopkins and to said George W. Hopkins individually the said George W. Hopkins and John S. Hopkins jointly, and the said George W. Hopkins individually, and the said John S. Hopkins individually, and several of the defendants jointly and individually have sold portions of said property to *bona fide* purchasers for value without notice of the equities charged in the bills of the complainants, and in this decree mentioned, namely, all of said property, except subdivision lots numbered fourteen (14) and fifteen (15), in square numbered ninety-four (94), and original lots four (4) and six (6), in square numbered ninety-five (95), and subdivision lots four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), thirty-nine (39), and forty (40), in square numbered ninety-six, of said original purchase.

5th. And it further appears to the court that the complainants have not acquiesced in the fraudulent conduct of said trustees nor been guilty of laches in not sooner asserting their rights:

Now, therefore, in consideration of the premises, it is, this 6th day of July, A. D. 1888, ordered, adjudged, and decreed that the judgment and decree of the said special term be, and the
58 same is hereby, reversed; and it is further ordered, adjudged, and decreed that the equity of this cause is with the complainants, and that, so far as the rights of the defendants in this cause are concerned, the sale of said original lot one (1), in square ninety-four (94), and the sales of squares ninety-five (95), ninety-six (96), and the sales of subdivision lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty-one (21), twenty-two (22), thirty-

eight (38), and thirty-nine (39), in square one hundred and ten (110), were and each of them was made to James Chapman as the agent of and on behalf of George W. Hopkins and John S. Hopkins, trustees of John Hopkins, to make said purchases for them, and the sale of said square numbered one hundred and eleven (111) was made to said James Chapman as the agent of and on behalf of George W. Hopkins, trustee as aforesaid, to make said purchase for him, and that said sales were and each of them was, and hereby are, adjudged to be fraudulent and void, and the said deeds are and each and every of them, except as hereinafter provided, is hereby declared and adjudged to be null and void, and the same are hereby set aside and shall forever hereafter be held for naught; but it appearing to the court that portions of said real estate have been sold to *bona fide* purchasers the title to said portions in said purchasers or persons claiming under them shall in nowise be affected by this decree; but the purchase-money derived from the sales of said portions, together with the rents hereinafter specified, shall be deemed to be a part of the said trust estate in lieu of the land from which the same was de-
59 rived, and shall be a lien on the unsold portion of said premises in the manner and to be accounted for by and for the benefit of the parties hereinafter specifically named.

It is further ordered, adjudged, and decreed that the devise by George W. Hopkins to defendant, Bettie Davenport, of subdivision lots numbered thirty-nine (39) *and forty* (40), *in square* 96, *was without consideration, and that the said Bettie Davenport is not a bona fide purchaser for value of said lots.**

And it is hereby further ordered, adjudged, and decreed that the alleged and pretended title to subdivision lots numbered fourteen (14) and fifteen (15), in square numbered ninety-four (94), and original lots four (4) and six (6), in square numbered ninety-five (95), and subdivision lots four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), thirty-nine (39), and forty (40), in square numbered ninety-six (96), of said original purchase, and still remaining vested, by virtue of said purchases of May 10, 1864, at the time of the filing of the bill in this cause, in several of the defendants as heirs-at-law of said George W. Hopkins and John S. Hopkins and Bettie Davenport is hereby divested, and John J. Johnson is hereby appointed trustee for the purposes hereinafter provided.

60 And it is further ordered, adjudged, and decreed that the said complainants are entitled to have from said defendants an accounting for the purchase-money received for property sold by their ancestors from whom they respectively claim, and also sold by them respectively, before the filing of the bill in this cause, and also

---

* Omitted in the brief of the appellees.

for rents and partition, as hereinafter specifically set forth; and, for the purpose of ascertaining the respective interests of the several parties, this cause is referred to the auditor, who shall state—

First. A joint account of said trustees, George W. Hopkins and John S. Hopkins, in which they shall be charged with all moneys received jointly by them from sales of said property bought by them at the sale of May the 10th, A. D. 1864, together with lawful interest on the same from the date of payments to the date of the account. The said trustees shall be allowed, as offsets to said charges, all sums of money paid by them for taxes or municipal assessments *paid*, new buildings erected on said property, repairs and betterments thereon, insurance and other lawful charges, together with lawful interest on the same from the dates of payment to the date of the account.

Second. An individual account of each of said trustees, in which each shall be charged, respectively, with all moneys received by him from sales of said property bought by them or either of them at the said sale of May 10th, A. D. 1864, together with lawful interest on the same from dates of payment to date of the account. Each of the said trustees shall be allowed as offset to said charges all
61 moneys paid by him as taxes on said property, municipal assessments paid, all moneys paid for the erection of new buildings on said property, for repairs, for betterments, insurance, and all other lawful charges, together with lawful interest on the same from the dates of payment to the date of the account.

And whereas each of the following children and heirs-at-law of the said John Hopkins, deceased, the said testator, namely, Emeline V. Lilburn, Elizabeth A. Earley, Mary V. Wailes, Alice C. Hall, Isaac H. Hopkins, George W. Hopkins, and William M. S. Hopkins, have severally received two thousand six hundred and sixty-seven dollars and sixty cents ($2,667.60) in the so-called settlement of said estate of March 28th, 1865, and part of the same was made up from the consideration money paid by said trustees for the property they bought at said sale, the auditor will therefore also allow the said trustees as against the party, respectively, who received the same or as against the legal representatives of such party, whatever that sum may be, with lawful interest from the dates of payment to the complainants, respectively, to the date of the account; but in the event that it is impracticable to ascertain how much of said money was derived from the sales of said real estate bought by said trustees, then the auditor shall allow the said entire sum of $2,667.60, with interest, as a credit in favor of said trustees against each of the children of said John Hopkins or their legal representatives on their shares.

And whereas the said trustee, George W. Hopkins, has died and since his death some of the defendants, as heirs of said
62 George W. Hopkins, have sold some of said property bought by said George W. Hopkins at said sale, May 10th, A. D. 1864, and received the consideration money therefor, the auditor shall state joint and separate accounts as may be necessary with each of the representatives of the said George W. Hopkins and said

defendant, Bettie Davenport, in which they shall be charged with all moneys received by them or either of them from sales of said property acquired through said George W. Hopkins, together with lawful interest on the same from the date of receipts of payment to the date of the account. The said defendants shall be allowed as offsets to said charges all sums of money paid by them or either of them for taxes or municipal assessments *paid*, new buildings erected on said property, repairs and betterments thereon, insurance and other lawful charges, together with lawful interest on the same from the dates of payment to the date of the account. The said defendants shall be respectively charged with reasonable rent for such of said property where the same was improved and occupied by them or either of them, and where they or either of them have rented the same they shall be charged with the rent received, with lawful interest on the same to the date of the account. In the statements of these accounts said George W. Hopkins shall be taken as the original owner of one-half interest of said purchases in squares numbered ninety-four (94), ninety-five (95), ninety-six (96), one hundred and ten (110), and one hundred and eleven (111) in his own right, and the account shall be stated accordingly.

63 And whereas the said trustee, John S. Hopkins, has died, and since his death his representatives, defendants, have occupied and received sums of money for the rent of a portion of said property held by them, the auditor shall state joint and separate accounts with each of the defendants, Bertha Hopkins (now Hammond) and Esther E. Hopkins, in which they shall be charged with a fair rental for their occupation and with the rental received by them, respectively, with lawful interest on the same to the date of the account. The said defendants shall be allowed as offsets to said charges all sums of money paid by them or either of them for taxes, all municipal assessments paid, all sums paid by them for new buildings erected by them, all repairs, betterments, insurance, and other lawful charges paid by them or either of them, together with lawful interest on same from the dates of payment to the date of the account.

And whereas in the settlement of the proceeds of sale of lots three (3), four (4), and five (5), in square numbered sixty-seven (67), known as the Mix property, said George W. Hopkins, trustee, appropriated to himself the sum of $3,525.04 without right, the auditor shall add to his account, to be stated as aforesaid, the said sum, with interest from the 18th day of June, A. D. 1872, to the date of the account.

If on the return of the auditor's report to the court and final action of the court thereon the representatives of George W. Hopkins, or those claiming through him, including Bettie Davenport, shall pay into court, within ninety days after said final action, the sums of money found to have been

64 due from George W. Hopkins, and also found to be due from themselves, respectively, or those through whom they claim; and if, on the return of the auditor's report to the court and final action thereon, the representatives of John S. Hopkins shall pay

into court, within ninety days after such final action, the sums of money found to have been due from said John S. Hopkins and also found to be due from themselves, respectively, then the auditor shall proceed to inquire into the practicability of partition of said remaining unsold real estate between the complainants and the defendants according to their respective interests; and, if partition is practicable, commissioners shall be appointed to make the same, who shall allot to the defendants, at their value, including improvements, as far as can be, such parcels of ground as have been improved by such defendants, it being the intention of this decree to allot, if possible, the improved property to the party who had made such improvement; but if said defendants, respectively, shall fail to pay the entire indebtedness found to be due from both George W. Hopkins and John S. Hopkins, respectively, together with such sums as shall be found to be due from themselves, respectively, or if partition is impracticable, then the said trustee shall make sale of said unsold real estate in fee simple at public auction, after due advertisement of ten days in two daily newspapers printed and published in Washington, D. C. Terms of sale: One-quarter cash, balance in one, two, and three years, with interest, or the whole of the purchase-money in cash, at option of purchaser.

65 And the auditor shall state an account, dividing the net proceeds as follows: One-half of the net proceeds of such sale, namely, the portion belonging to the estate of the said George W. Hopkins, shall be applied to the payment of the indebtedness found to be due, to wit, the sum which said George W. Hopkins or his representatives, respectively, had received in excess of said George's one-half interest. This sum, together with the other half, namely, the portion belonging to the estate of John Hopkins and his representatives, shall be equally divided among the representatives of John Hopkins. The share belonging to the representatives of John S. Hopkins shall be charged with any amount received by him or his representatives, respectively, in excess of his or their distributive share as a devisee of John Hopkins. If it shall appear that the defendants or either of them, as heirs or next of kin of either George W. Hopkins or John S. Hopkins, have received, either from moneys received from their respective ancestors or from sales of said lots in said squares made by them, said representatives, respectively, sums greater than they should have received, after deducting the value of their interest in said remaining unsold real estate, then the auditor shall state an account with each defendant showing how much he or she has received in excess; and all questions as to the right of the complainants to a decree for such excess are reserved for the future determination of this court.

The plaintiffs are hereby awarded the costs of this suit.

66 And from the foregoing decree the defendants and each of them pray an appeal to the Supreme Court of the United States, which is allowed.

E. F. BINGHAM,
Chief Justice.

Supreme Court U. S.
FILED
NOV 1 1888
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1888.

BERTHA HOPKINS ET AL., *Appellants,*

vs.

WILLIAM B. HOPKINS ET AL., *Appellees.*

No. 1041.

MOTIONS.

1. TO DISMISS APPEAL.
2. TO INCREASE BOND.

Brief for Appellees.

SAMUEL L. PHILLIPS,
J. J. JOHNSON,
S. SHELLABARGER,
J. M. WILSON,
Solicitors for Appellees.

R. O. Polkinhorn, Printer, 632 and 634 D Street.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

BERTHA HOPKINS ET AL., *Appellants*,

vs.

WILLIAM B. HOPKINS ET AL., *Appellees*.

---

1. The appellees in the above cause move the court to dismiss the appeal taken therein, and assign for reason thereof that the decree from which said appeal is prosecuted is interlocutory, and not final.

2. In the event that the court should decide that the said decree is final, and the appeal well taken, the appellees move the court to order, under pain of vacating the supersedeas granted said appellants, that they, the said appellants, shall file in your honorable court by some reasonable day, a further bond with approved sureties for an additional sum of ten thousand dollars; and the appellees assign as reasons therefor, as sustained by affidavits filed, that the annual rents for which by the terms of the decree the appellants are accountable, amount to three thousand five hundred and fifty dollars per annum; that in three years the probable delay caused by the appeal,

the sums so received by the appellants will amount to ten thousand six hundred and fifty dollars ; that said appellants have filed a bond only in the penal sum of five thousand dollars ; and that the presentation and approval of the said bond were procured in the absence of the appellees' solicitors without notice to them or either of them, and without their knowledge or consent ; and that the said bond is insufficient to cover the damages which will be caused by said appeal.

Respectfully submitted,

SAM'L L. PHILLIPS,
JOHN J. JOHNSON.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of April, 1884.

WILLIAM B. HOPKINS, ANNA B. HOPKINS, *by her next friend*, WILLIAM B. HOPKINS; SARAH E. HOPKINS, *by her next friend*, ELIZABETH A. EARLY; ELIZABETH A. EARLY, MARY V. WAILES, ALICE C. HALL and IDA M. STONE,

Plaintiffs,

vs

BERTHA HOPKINS, BERTHA HOPKINS, *Administratrix of* JOHN S. HOPKINS; ESTHER E. HOPKINS, ELIZABETH B. LUTTRELL, IRA W. HOPKINS, MARY E. HOPKINS, BETTIE DAVENPORT; SAMUEL C. RAUB, *trustee for* BETTIE DAVENPORT, SAMUEL C. RAUB, *executor of* GEO. N. HOPKINS; L. FREDDIE HOPKINS, *administratrix;* THOMAS J. LUTTRELL, *administrator of* GEORGE W. HOPKINS; THOMAS J. LUTTRELL, *executor of* CORNELIUS HOPKINS.

Bill of Complaint.

To the Supreme Court of the District of Columbia holding an Equity Court for said District:

The plaintiff states as follows:

1. That William B. Hopkins is a citizen of the District of Columbia, and brings this suit in his own right; that Anna B. Hopkins is an infant in the sixteenth year of her age, and brings this suit in her own right, by her next friend, William B. Hopkins; that Sarah E. Hopkins is a citizen of Baltimore City, in the state of Maryland, and brings this suit in her own right, by her next friend, Elizabeth A. Early; that Elizabeth A. Early is a citizen of said district, and brings this suit in her own right; that Ida M. Stone is a citizen of St. Mary's County, in the State

of Maryland, and brings this suit in her own right; that Mary V. Wailes and Alice C. Hall are each citizens of said District, and bring this suit respectively in their own rights.

"2. That the defendants Bertha Hopkins, Esther E. Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins and Bettie Davenport are each citizens of the District of Columbia and are each sued in their own right; that the defendant Bertha Hopkins is a citizen of said District, and is sued in this action as administratrix of John S. Hopkins, deceased; that the defendant Samuel C. Raub is a citizen of said district, and is sued in this action as trustee for said Bettie Davenport and as executor of George N. Hopkins deceased; that the defendants L. Freddie Hopkins and Thomas J. Luttrell are each citizens of said District, and are sued in this action as administratrix and administrator, respectively, of George W. Hopkins, deceased; that the defendant Thomas J. Luttrell is a citizen of said District, and is sued as executor of Cornelius Hopkins, deceased.

"3. That prior to and on the 23rd day of November, in the year 1858 one John Hopkins and one George W. Hopkins were seized and possessed in fee simple each of an undivided moiety, as tenants in common, of all of squares numbered ninety-four (94), ninety-five (95), ninety-six (96), one hundred and ten (110) one hundred and eleven (111), and lot numbered three (3) in square eighteen (18), all situated in the City of Washington, District of Columbia, as the same are laid down on the public plats of said City.

"4. That being seized and possessed as aforesaid, the said John Hopkins executed, on the said 23rd day of November, 1858, his last will and testament, a true copy of which (marked exhibit Hopkins No. 1), is herewith filed as a part of this bill, by which he gave and devised all his interest in his said real estate to his brother said George W. Hopkins and his son

John S. Hopkins, and the survivor of them and the heirs of each survivor in trust for the following uses, viz: to carry on the brick making business on said land; to receive the rents, profits, issues, and income of said estate and business; to support the family of said testator until May 1st, 1864; to sell such portions of said real estate, when, in their judgment it would be advantageous, exempting purchasers thereof from seeing to the application of the purchase money; to invest the surplus proceeds arising from said sales; and upon the arrival of his daughter Alice to the age of eighteen years, which would occur on or about the first day of May, 1864, his estate of every kind should be divided by said trustees among his children, reposing especial trust in the prudence and discretion of said trustees, and giving them full power to exercise their judgment as circumstances might arise, and believing that they would have the welfare of his family at heart; as all of which will more fully and at large appear by reference to said last will and testament.

"5. That the said John Hopkins continued seized and possessed as aforesaid of said land, and departed this life on the 27th day of November, 1858, leaving as children and his heirs-at-law, Isaac H. Hopkins, since deceased, without issue; the said Elizabeth A. Early, born Hopkins; George W. Hopkins, William M. S. Hopkins, Emeline V. Lilburn, born Hopkins, Mary V. Wailes, born Hopkins, Alice C. Hall, born Hopkins, John S. Hopkins, and Levin Hopkins.

"6. That the said Isaac H. Hopkins and Levin Hopkins have since died intestate without issue; that the said George W. Hopkins has since died in the month of July, 1870, leaving as his only children and heirs-at-law, said William B. Hopkins, then eleven years of age, and Anna B. Hopkins, then two years of age; that the said Emeline V. Lilburn has on the seventh day of April, 1884, conveyed all her right and title absolutely and unconditionally in said estate to her daughter, Ida M. Stone, one of the plaintiffs; that

the said John S. Hopkins has since died on the 7th day of May, 1883, leaving as his only child and heir-at-law, said defendant, Bertha Hopkins.

"7. That the said George W. Hopkins and said John S. Hopkins accepted the said trust, entered into possession of said premises, carried on the business of brick-making for several years, collected the rents and profits of said estate, and these plaintiffs have lately been informed and believe and so charge that the said trustees sold at various times prior to the first day of May, 1864, portions of said property for which they received $4,000, the particulars of which these plaintiffs will prove on an account before the Auditor of this court.

"8. That it has lately come to the knowledge of these plaintiffs (the circumstances of which knowledge are hereinafter set out at length in their chronological order), and they charge that the said trustees at this period in the existence of their trust meditated a scheme by which they as trustees should by artifice and fraud become seized and possessed of said entire estate, in their own right and property, to the exclusion and detriment of these plaintiffs, freed and discharged of the trusts under which they held it. That in pursuance of this scheme of fraud the said John S. Hopkins, fraudulently, on or about the 20th of June, 1860, and while he was trustee under said will for his brother, said William M. S. Hopkins, operated upon and persuaded the latter that it would be for his benefit for him, said William, to make him, said John S. Hopkins, a conveyance of his share in his late father's estate, the said John S. Hopkins promising to hold the same for his use and benefit; that the said William being at that time of exceedingly dissipated habits, whose mental capacity was so enfeebled by excesses in alcoholic stimulants as to be incompetent to make a valid deed or contract, and who was subsequently confined in the United States Hospital for the Insane in said District on three several occasions aggregating more

than two years; that the said William while in this state of mental incapacity did at the instance and dictation of the said John S. Hopkins, and while under his control, sign not only his own name to an absolute conveyance of all his share in the estate of their father, for an alleged consideration of three thousand dollars, which was never paid, but also at the command and direction of said John, did sign and write the name of said plaintiff, Sarah E. Hopkins, the wife of said William, to said deed, without the knowledge, privity, or consent of said plaintiff, Sarah E. Hopkins, and by means of fraud unknown to these plaintiffs, obtained a certificate of acknowledgment to said deed by two justices of the peace; the said deed was recorded by the said John S. on the 7th July, 1860, and redelivered to him by the record of said deed on the 25th January, 1864, and the plaintiffs pray the production and discovery of the same; a certified copy of the record of said deed is hereto annexed, marked (Hopkins, No. 2), and prayed to be read as a part of ths Bill; and these plaintiffs severally aver that of each and all of which facts each and all of these plaintiffs have been totally ignorant until within two months last past; the circumstances of their acquiring their knowledge of the same will be hereinafter stated at length; and which said deed by proper and independent proceedings in equity, the plaintiff, Sarah E. Hopkins, by her next friend, and Christopher Ingle, as trustee, will pray this Honorable Court to vacate, cancel, and declare the trust as still existing in favor of said Ingle and Sarah E. Hopkins, as assignees of said William.

"9. That it has lately come to the knowledge of these plaintiffs (the circumstances of which knowledge are hereinafter set out at length in their chronological order) that the said William M. S. Hopkins, knowing that he had not sold and conveyed in fact the interest, right, and title to his patrimony to said John S. Hopkins, nor had received the payment of the consideration therein mentioned, did, on the 28th

January, 1864, convey all his right, title and interest in his said father's estate to said plaintiff Christopher Ingle, his heirs and assigns, in consideration of natural love and affection for his wife the said plaintiff Sarah E. Hopkins and the sum of ten dollars, in trust for the benefit of said Sarah E. Hopkins, as will more fully appear by reference to said deed recorded in liber N. C. T. 25 fol. 246, and prayed to be read as a part of this bill ; whereby the said Christopher Ingle, his heirs and assigns, have become entitled to the share of the estate of the said John Hopkins, the common ancestor, to hold the same in trust for the uses and purposes mentioned in said deed ; and these plaintiffs severally aver that of each and all which facts, each and all these plaintiffs have been totally ignorant until within about two months last past ; the circumstances of their acquiring their knowledge of the same will be hereinafter stated at length.

"10. That it has lately come to the knowledge of these plaintiffs (the circumstances of which knowledge are hereinafter fully set forth) and they charge that the said trustees in furtherance of their fraudulent scheme by which they, as trustees, should become seized and possessed of said entire estate in their own right and property, freed and discharged of the trusts under which they hold it, to the exclusion of these plaintiffs, and thereby also to enjoy the undisturbed possession and enjoyment of the said brick business, the said trustees under the authority given by the said last will and testament did cause the whole of said property to be advertised for sale at public auction on the 10th day of May, 1864, a copy of which advertisement is filed herewith marked (Exhibit Hopkins No. 3) and prayed to be read as a part of this bill ; that they did fraudently procure one James Chapman, now deceased, to attend such sale, and bid for them, said trustees, secretly and fraudulently on their own behalf as individuals for a large majority of the property offered, constituting

the most valuable portion of the same, that is to say, that the said Chapman was the purchaser for said trustees at their own sale of the whole of squares Nos. 95 and 96, all of lot No. 1 in square 94 on 20th street, containing 187,422 square feet at 4 cents per square foot; the whole of square No. 111, containing 101,038 square feet at 9 cents per square foot; lots 16, 17, 18, 19, 20, 21 and 22 in square No. 110 at 8½ cents per square foot; and lots 38 and 39 in square No. 110 at $315 per lot; that the balance was sold to strangers, who were *bona fide* purchasers for value, and whose title is indefeasible, so far as the claim of these plaintiffs extend.

"11. That after the sale, on the return of the said George W. Hopkins, trustee, to the home residence, Emeline V. Lilburn, one of the heirs, on hearing the price for which the said land was sold, expressed her surprise to said trustee, her uncle, that it had brought so low a price, and that he had allowed it to be sacrificed, he thereupon assured her that the said sales were each and all *bona fide*, which said false and fraudulent assertion neither of the said trustees have ever corrected, but purposely have allowed these plaintiffs for now nearly twenty years to rest under the belief that the same was true; that the said fraud in said sale has been discovered by the plaintiffs only within a few weeks last past, under circumstances hereinafter set out at length.

"12. That in pursuance of said fraud a conveyance was made on the 20th May, 1864, by said trustees to said Chapman of lot 1, in square 94, all of squares 95, 96 and 111, and lots 16, 17, 18, 19, 20, 21, 22, 38 and 39 in square 110, for the consideration of one dollar, and recorded on the 16th November, 1864, in liber N. C. T. 49, folio 334, a certified copy of which is herewith filed as a part of this bill (marked Exhibit Hopkins, No. 4), and prayed to be read as a part hereof, and these plaintiffs pray the production of the original conveyance; and on the same 20th May,

1864, and contemporaneously therewith the said Chapman executed a re-conveyance of the same property, except square 111, for an alleged consideration of $10,842.24 to the said George W. Hopkins and John S. Hopkins as individuals, which said conveyance was delivered for record on the said 16th November, 1864, contemporaneously, with the last recited conveyance, and was recorded in the same liber, N. C. T. 49, folio 336, a certified copy of which is herewith filed as a part of this bill (marked Exhibit Hopkins, No. 6), and prayed to be read as a part of this bill, and these plaintiffs pray the production of the said original conveyance; and on the same 20th May, 1864, and contemporaneously with said two conveyances, the said Chapman executed a re-conveyance of square 111 for an alleged consideration of $9,093.42 to the said George W. Hopkins as an individual, which said conveyance was delivered for record on the said 10th of November, 1864, contemporaneously with said other two conveyances, and was recorded in the same liber N. C. T. 49, folio 343, a certified copy of which is herewith filed as a part of this bill (marked Exhibit Hopkins, No. 7), and prayed to be read as a part of this bill, and these plaintiffs pray the production of the said original conveyance; and these plaintiffs allege that the said purchase by said Chapman was for the benefit of said trustees, as individuals, while in the discharge of their trust without the knowledge or consent of these plaintiffs, and said conveyance to said Chapman and re-conveyance by said Chapman to said trustees George W. Hopkins and John S. Hopkins, as individuals, and to said George W. Hopkins individually, were each and all fraudulent and void; that the trusts under said original will have never been executed, but still subsist in favor of these plaintiffs against the said trustees and their heirs and volunteers.

"13. That it has lately come to the knowledge of these plaintiffs (to be detailed hereafter), and they

charge that the said trustees in furtherance of their said fraudulent scheme to possess themselves individually of the said trust estate, and brick business, and in order to give a semblance of right to their said fraudulent conduct did, after lapse of nearly seven years from the death of their testator, file in the Orphans' Court of said District "a first and final account" of what purported to be "an account of the personal estate of John Hopkins, deceased, by George W. and John S. Hopkins, executors," alleged to consist of the personal estate of said decedent, of the profits made out of the brick business, and the value of the deceased's interest in the firm of John and George W. Hopkins, showing that there was for distribution the sum of $22,131.46, and these plaintiffs have caused diligent search to be made among the records of said Orphans' Court for the vouchers and papers on which said account was based, but have not been able to find the same, so as to discover in what manner the item of $14,952.66, the proceeds of sale of the half interest was made up; a certified copy of which account is herewith filed (marked Exhibit Hopkins, No. 8), and prayed to be read as a part of this Bill; and the said trustees without explaining the nature of their trust, or their fraudulent conduct in regard to said sales, and without actual notice to, or any personal knowledge of any of these plaintiffs, did obtain an order of said court directing a distribution of the sum of $2,667.60 to each of the children, then living, of said John Hopkins, as heirs-at-law. And these plaintiffs are advised and aver that the said Orphans' Court had no jurisdiction in the administration of trusts as regards either real or personal property; that the division of the real estate of said decedent was the administration of a trust, and therefore, if said order was a distribution of the proceeds of said pretended sales to Chapman, which they charge it was not, that the said order obtained by said trustees directing such division was without the jurisdiction of said Orphans' Court, and void, and not binding in a court of equity, the only competent

tribunal in the District of Columbia to administer and enforce trusts.

"14. That subsequently to the said order of said Orphans' Court the said trustees paid to each of the children, these plaintiffs or their ancestors, then living, except to William M. S. Hopkins, the said distributive share of $2,667.60, less certain charges, not here important, informing each when so paid, that it was his or her share in their father's estate. And these plaintiffs do each severally aver, that having the most implicit confidence in the rectitude of their said uncle, and believing that it was true that the sum so tendered was in fact all that they were entitled to (except the Mix lot, which was then in controversy, and since paid these plaintiffs, except Sarah E. Hopkins), these plaintiffs accepted the same and gave receipts therefor. But these plaintiffs aver that being ignorant of the fraud, through the artifices of said trustees, which was practised on them, that the receipt of the said several sums does not estop them from the enforcement of their equity to a fair and just division of their father's estate against said trustees, their heirs and volunteers ; and the said plaintiffs do each severally agree that whatever sum with interest each may have so received is a just charge against the share of each plaintiff in the final division of the estate, and which they do hereby express their assent may be deducted from the same.

"15. That the plaintiffs are informed and believe and so charge that subsequent to April 10, 1864, and prior to the 16th November, 1864, the date said trustees repudiated their trust by recording said deeds from Chapman to themselves, as individuals, they had as trustees sold to *bona fide* purchasers for value portions of said real estate, for which they have received $10,500; the particulars of which these plaintiffs will prove when the case shall be referred to the auditor for account.

"16. The plaintiffs are informed and believe and so charge that subsequent to the said 16th November, 1864, and prior to 22d December, 1875, the said trustees sold jointly and individually portions of the said real estate to *bona fide* purchasers, for which they have received $6,000; the particulars of which these plaintiffs will prove when the case shall be referred to the auditor for account.

"17. That the said trustee, George W. Hopkins, trustee as aforesaid, died intestate on the 22d December, 1875, leaving as his only children and heirs-at-law George N. Hopkins, said defendants Elizabeth B. Luttrell, born Hopkins; Ira W. Hopkins, Mary E. Hopkins and Cornelius Hopkins; that letters of administration on his estate were granted to said defendants, L. Freddie Hopkins and Thomas J. Luttrell; that said George N. Hopkins has since died on Nov. 18th, 1881, having first devised by way of executory devise all his real estate to said defendant, Samuel C. Raub, as trustee for said defendant, Bettie Davenport, her heirs and assigns; that the contingency on which said devise was limited has happened, and the equitable estate in fee simple is invested in her, as all of which will more fully appear by reference to said will, hereto annexed (marked Exhibit Hopkins, No. 9), and prayed to be read as part of this bill; that letters of administration on said George N. Hopkins' estate were granted to said defendant, Samuel C. Raub; that said Cornelius Hopkins has since died, on July 17th, 1883, having devised his entire estate as follows: One-half to said defendant, Mary E. Hopkins, one-quarter to said defendant, Elizabeth B. Luttrell, and one-quarter to said defendant, Ira W. Hopkins; that to said Thomas J. Luttrell letters testamentary have been granted as executor of said Cornelius Hopkins.

"18. That these plaintiffs are informed and believe and so charge that after the death of said George W. Hopkins, said John S. Hopkins filed his suit for

partition of lot one in square No. 94, and all of squares Nos. 95 and 96, in your Honorable Court, Equity cause No. 5685, against the said heirs of George W. Hopkins, and that by which there was allotted in severalty on November 12th, 1877, to said John S. Hopkins lots 1, 2, 3, 4 and 6, in square No. 95, with improvements; lots 5, 6, 7, 8, 9, 10 and 11, in square No. 96, with improvements; and to the said heirs of George W. Hopkins, in severalty, lot 1, in square No. 94, with improvements, lot 5; in square No. 95, and lots 1, 2, 3, 4, 12, 13, 14, 15 and 16, in square No. 96.

"19. That subsequently the said heirs of George W. Hopkins filed their suit for partition in your Honorable Court (Equity cause No. 5690), of the real estate allotted to them as set forth in the preceding paragraph, and also of square No. 111; that in said suit said Thomas J. Luttrell was appointed trustee, with power to sell certain lots to pay the debts of their ancestor, said George W. Hopkins, and who did sell, as trustee, to *bona fide* purchasers, lots for which he received $16,000, the particulars of which these plaintiffs will prove when the case shall be referred to the auditor for an account; after the payment of said debts there was allotted in severalty to said heirs as follows: To said Cornelius Hopkins subdivision lot 11, in square 94, sub-lots 33, 34, 35, 54, 55 and 56, square 96; sub-lots 50, 51, 62, square 111; to Mary E. Hopkins sub-lots 9 and 12, square 94, sub-lots 2, 3, 31, 32, 45, 46, 47, square 96; sub-lots 43, 44, 61, square 111; to Elizabeth B. Luttrell sub-lot 8, square 94, sub-lots 1, 37, 38 57, 58, square 96, sub-lots 47, 48, 49, 60, square 111, to said George N. Hopkins sub-lot 10, square 94, sub-lots 39, 40, 51, 52, 58, square 96, sub-lots 52, 53, 54, and 58, square 111; to Ira W. Hopkins sub-lot 7, square 94, sub-lots 29, 30, 36, 48, 49, 50, square 96, sub-lots 45, 46 and 59, square 111, as the same are respectively recorded in the office of the surveyor for the City of Washington, D. C.

"20. That these plaintiffs have been informed and believe and so charge that after the said partition suits of the said John S. Hopkins of the lots allotted to him, sold a number to *bona fide* purchasers for, and has received the sum of $50,000, and that the heirs of the said George W. Hopkins have sold nearly all of those allotted to them to *bona fide* purchasers, viz., all except sub-lots 14 and 15 square 94, and sub-lots 39 and 40 in square 96, and have received therefor the sum of $75,000, the particulars of which sales these plaintiffs will prove before the auditor on an account to be stated. That the title of these purchasers is indefeasible, but that the purchase-money received, as alleged in paragraph 7, 15, 16, 19 and 20, has been received by the respective parties as trustees for the shares the plaintiffs are respectively entitled to : that the trust attached to the land has been transferred to the funds received as purchase money, and the same being in the hands of said trustee, their heirs, administrators and devisees, is answerable in equity, in the place of the land which has been sold, and for any deficiency of land to pay said indebtedness ; that the said defendants are respectively responsible to the extent of the inheritance respectively received by them, for the amounts received by their ancestors as well as for whatever they have sold themselves.

"21. That the said John S. Hopkins, the other of said trustees died on the 7th day of May, 1883, leaving said defendant Bertha Hopkins as his only child and heir-at-law, and said Esther E. Hopkins as his widow. That letters of administration on his estate have been granted to said Bertha Hopkins as sole administratrix.

"22. That these plaintiffs do severally aver that they have, within the last past few weeks, discovered, for the first time, the following circumstances in the manner herein set out, namely ; that when the said John S. Hopkins, trustee, induced his

brother, and *cestui que trust* William M. S. Hopkins, to convey to him his estate as alleged in paragraph eight, the said John S. Hopkins charged the said William that he should not tell his wife, the said plaintiff Sarah E. Hopkins, of his having made such deed, and threatened him that if he did his said wife would leave him and return to Baltimore to her father; that numberless times from that time to the date of his death the said John S. Hopkins inquired of the said William if he had ever informed his wife of the conveyance to him, and on every occasion urged him not to do so; that the said William being always poor, and frequently in positive want for the absolute necessities of life, was constantly importuning the said John S. Hopkins for his share of the estate, and waiting for a division, when the said John S. Hopkins did pay to the said William at various times in all about nine hundred dollars, and put him off by alleging that he was waiting for the property to rise in value, and when he sold that the said William would get his share; at other times when the said William would threaten to sue the said John S. Hopkins the latter would bluff him off by such statements, that if he did sue, he would not get a cent, but that he would give it to his wife, who had separated from said William, and that so it was by intimidations, threats and promises, the said William was always waiting to the hour of the death of the said John S. Hopkins in the hope that he would get his share of the estate; that when the said John S. Hopkins died unexpectedly on May 7th, 1883, and had made no provisions for the said William, the said William began to seek the advice of counsel as to what were his rights, and after having consulted several without effect, at a considerable waste of time, finally placed his case about the first of February last past in the hands of Samuel L. Phillips, attorney-at-law; that the said attorney undertook the investigation of the case, and discovered for the first time from living disinterested witnesses that the said James

Chapman had never paid one dollar of consideration for said land, but had bought the same for and on account of said trustees, and that the sale was fraudulent and void; that the said attorney discovered that the said William had conveyed his interest to said Ingle in trust for said plaintiff, Sarah E. Hopkins his wife, and if any recovery was to be had the said Sarah E. Hopkins should be informed of her rights. The said attorney thereupon wrote a letter to said Sarah E. Hopkins, residing in Baltimore, Md., and who in a day or two after its receipt came to Washington, called on said attorney, and this plaintiff, Sarah E. Hopkins, avers was told for the first time in her life on the 5th of February, 1884, either of the conveyance by said William to said John S. Hopkins, or the conveyance of William to said Ingle in trust for her benefit, or of the fraudulent practices of said trustees as hereinbefore set forth as to the purchase of said land, and the said Sarah E. Hopkins has thereupon authorized said attorney to bring suit to enforce her rights. That in order to secure further information, if any existed, the said attorney instructed the said William to call on his sisters and make an appointment with them to see him, said attorney, which the said William did do, during the month of February or March, 1884, and at which interview the said William informed these plaintiffs, Elizabeth A. Early, Mary V. Wailes, and Alice G. Hall of the discovery of witnesses who would testify that the said sales from said trustees to said Chapman, and said Chapman to said George W. Hopkins and John S. Hopkins, jointly, and to said George W. Hopkins, individually, were without consideration, fraudulent and void as hereinbefore set forth, and these plaintiffs aver that this was the first time in their lives that they or either of them had ever been informed, or in any manner known of said fraudulent sales, or had any reason to suspect that the same were not true and *bona fide*. That the said attorney called March 27th last past on these plaintiffs, Elizabeth A. Early, Mary V. Wailes and Alice

C. Hall, and said Emeline V. Lilburn, and they severally aver that they were informed by said attorney for the first time of the particulars of the fraudulent practices of said trustees in buying at their own sales, through said Chapman as hereinbefore set forth; but, on the contrary, aver that by the assurance of said trustees that the same were *bona fide;* by the suppression of the truth these many years; by the fact that they were always informed that the said trustees had plenary power under said will of their father; by the great confidence they had in the integrity of their said uncle; by their incapacity as females entirely unused to business, these plaintiffs Elizabeth A. Early, Mary V. Wailes, Alice C. Hall, and their sister Emeline V. Lilburn, have uncomplainingly submitted to what they have often deplored as their ill-fortune, while another member of the family, their own brother, and his daughter, claiming through the same ancestor, was in possession of estates worth over two hundred thousand dollars; that these plaintiffs thereupon immediately resolved to enforce such rights as they were entitled to, and authorized said attorney to take the necessary legal proceedings; that this plaintiff, William B. Hopkins, was a child only five years of age when said fraudulent sale was made, and said plaintiff Anna H. Hopkins, was not born for nearly five years afterwards, and that this plaintiff, William B. Hopkins, on the 31st day of March last past, was for the first time in his life informed of the facts hereinbefore recited as to said fraudulent conveyance by said trustees and Chapman; the said Anna B. Hopkins is still an infant fifteen years of age; that Emeline V. Lilburn, the grantor of this plaintiff, Ida N. Stone, was present on March 27 last past at the interview of said attorney with her said sisters, and heard for the first time in her life that the said sales from said trustees to said Chapman and back to said George W. Hopkins, and John S. Hopkins, and George W. Hopkins individually, were fraudulent and void for the causes herein set forth; and the said plaintiff, Ida N. Stone,

does aver that down to said 27th day of March the said Emeline V. Lilburn knew nothing of said fraudulent practices of said trustees or either of them, but on the contrary discovered the same in the manner hereinbefore set forth; and the said plaintiff, Ida N. Stone, does aver that she was ignorant of the same down to April 7, 1884, the date of the conveyance to her said plaintiff by her mother said Emeline V. Lilburn. Whereby, if these plaintiffs shall prove these facts to the satisfaction of your HonorableCourt, they allege that they have been guilty of no negligence in the prosecution of their rights, and are entitled to relief.

"23. That these plaintiffs have been informed and so aver that there is yet unsold a large portion of said estate, and in the possession of said defendants, namely: sub-lots four and six in square 95, subdivision lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 39 and 40 in square 96, subdivision lots 14 and 15 in square 94, and that the same are worth two hundred thousand dollars, and that the distributive share of each of these plaintiffs will amount to twenty thousand dollars.

Prayers.

"Wherefore these plaintiffs pray that the said deeds from said trustees to said Chapman and from said Chapman to said George W. Hopkins and John S. Hopkins, jointly, and to said George W. Hopkins, individually, may be declared void and cancelled; and that the said estate is held by the defendants as heirs-at-law of said George W. Hopkins on the original trusts mentioned in said will of John Hopkins, deceased.

"That the said estate may be divided, as it was the duty of said trustees to have done.

"That an account may be stated of the sums received with interest on all sales made by said trus-

tees or either of them, or by any of the defendants, and also of what these plaintiffs, or either of them have received, with interest on said pretended division, and that these plaintiffs may be allowed according to their respective interests, their shares of such sales, and that such sums found to be due to such of these plaintiffs may be declared to be a lien on the said real estate respectively held by them—the defendants.

"That these plaintiffs may each have judgment and execution for the sums found due to them, respectively, on said sales made by said truestees, or either of them, or by said defendants or either of them.

"That an injunction may be issued restraining either of said defendants from selling any portion said estate, recited in paragraph 23.

"That a receiver may be appointed to take possession of said premises and to collect the rents, issues and profits thereof.

"That this suit may operate as a *lis pendens* and notice to subsequent purchasers.

"That these plaintiffs may have such other and further relief as the nature of their case may require.

"That the following are the defendants to this bill, and against each of whom these plaintiffs pray the United States' writ of subpœna commanding them and each of them to answer the allegations of this bill, viz: Bertha Hopkins; Bertha Hopkins, administratrix of John S. Hopkins, Esther E. Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins, Samuel C. Raub, trustee for Bettie Davenport; Bettie Davenport, Samuel C. Raub, executor of George N. Hopkins, L. Freddie Hopkins, administratrix of George W. Hopkins, Thomas J. Luttrell, administrator of George W. Hopkins, Thomas J. Luttrell, executor of Cornelius Hopkins.

"These plaintiffs do expressly waive all answers by said defendants and each of them under oath.

"And these plaintiffs will ever pray, &c."

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
HOLDING A GENERAL TERM.

WILLIAM B. HOPKINS *et al.*
vs.
BERTHA HOPKINS *et al.*
} In Equity No. 8953.

Decree.

"This cause came on to be heard on appeal from the decree of the Supreme Court of the District of Columbia, holding a special term as a Court of Equity, and the same was heard on bills, answers, replications, exhibits, and proofs, and arguments of counsel, and duly considered by the court.

"And it appears to the court that John Hopkins, by his will, devised to George W. Hopkins and John S. Hopkins as trustees, the one-half, undivided, interest in the following real estate, situate in the City of Washington, District of Columbia, as averred in said bill, namely: original lot numbered one (1) in square ninety-four (94), squares ninety-five (95), ninety-six (96), one hundred and ten (110), and one hundred and eleven (111), in trust, (among other things) upon the arival of his daughter, Alice, to the age of eighteen years, which would occur on or about the first day of May, 1864, his estate of every kind should be divided by said trustees among his children.

"2nd. That under and by virtue of the provision of said will and the said trust thereby created, the complainants, as specifically set out in the bills filed in this cause were, at the time set for said division, entitled with said John S. Hopkins as set forth in said bills to the undivided one-half interest in said real estate.

"3rd. That on the 10th day of May, A. D., 1864, the said trustees pretended to sell said premises at public auction; that, in making said pretended sales, they caused said lot numbered one (1) in square

ninety-four (94), the whole of square ninety-five (95) and ninety-six (96), and sub-division lots sixteen(16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), and twenty-two (22) in square numbered one hundred and ten (110) to be bid off by one James Chapman, as their agent for their joint benefit; that the said Chapman made said bid for said trustees; that on the said 10th day of May, A. D., 1864, the said trustees pretended also to sell said square numbered one hundred and eleven (111) at public auction; that in making said pretended sale the said George W. Hopkins, trustee as aforesaid, caused the whole of said square one hundred and eleven (111) to be bid off by said James Chapman as his agent for his own benefit; that said Chapman made said bid for said trustee; that said Chapman paid no purchase money or consideration for said premises, or either of them, and conveyed the same according to the afore-recited bids to George W. Hopkins and John S Hopkins, jointly, and to George W. Hopkins, individually, without any consideration, therefor, whatever from them or either of them.

"4th. That since the conveyances by the said James Chapman to said George W. Hopkins and John S. Hopkins, and to said George W. Hopkins, individually, the said George W. Hopkins and John S. Hopkins, jointly, and the said George W. Hopkins individually, and the said John S. Hopkins, individually, and several of the defendants jointly and individually, have sold portions of said property to *bona fide* purchasers for value without notice of the equities charged in the bills of the complainants and in this decree mentioned, namely, all of said property, except subdivision lots numbered fourteen (14) and fifteen (15) in sqnare numbered ninety-four (94) and original lots four (4) and six (6) in square numbered ninety-five (95), and subdivision lots four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21),

twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty six (26), twenty-seven (27), twenty-eight (28), thirty-nine (39), and forty (40), in square numbered ninety-six of said original purchase.

"5th. And it further appears to the court that the complainants have not acquiesced in the fraudulent conduct of said trustees nor been guilty of laches in not sooner asserting their rights.

Now therefore, in consideration of the premises, it is, this 6th day of July, A. D., 1888, ordered, adjudged and decreed that the judgment and decree of the said special term be, and the same is hereby reversed. And it is further ordered, adjudged and decreed that the equity of this cause is with the complainants; and that so far as the rights of the defendants in this cause are concerned, the sale of said original lot one (1), in square ninety-four (94), and the sales of squares ninety-five (95), ninety-six (96), and the sales of subdivision lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty-one (21), twenty-two (22), thirty-eight (38), and thirty-nine (39) in square one hundred and ten (110), were and each of them was made to James Chapman as the agent of, and on behalf of George W. Hopkins and John S. Hopkins, trustees of John Hopkins, to make said purchases for them; and the sale of said square numbered one hundred and eleven (111) was made to said James Chapman as the agent of, and on behalf of George W. Hopkins, trustees as aforesaid, to make said purchase for him; and that said sales were and each of them was, and hereby are adjudged to be fraudulent and void, and the said deeds are and each and every of them, except as hereinafter provided, is hereby declared and adjudged to be null and void, and the same are hereby set aside and shall forever hereafter be held for naught. But it appearing to the court that portions of said real estate have been sold to *bona fide* purchasers, the title to said portions in said purchasers or persons claiming under them shall in no wise be

affected by this decree. But the purchase-money derived from the sales of said portions, together with the rents hereinafter specified, shall be deemed to be a part of the said trust-estate in lieu of the land from which the same was derived, and shall be alien on the unsold portion of said premises in the manner, and to be accounted for by, and for the benefit of the parties hereinafter specificially named.

"It is hereby further ordered, adjudged and decreed that the alleged and pretended title to subdivision lots numbered fourteen (14) and (15) in square numbered ninety-four (94) and original lots four (4) and six (6) in square numbered ninety-five (95) and subdivision lots four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), *thirty-nine* (39) and *forty* (40) in square numbered *ninety-six* (96) of said original purchase, and still remaining vested, by virtue of said purchase of May 10, 1864, at the time of the filing of the bill in this cause, in several of the defendants as heirs-at-law of said George W. Hopkins and John S. Hopkins, and Bettie Davenport, is hereby divested, and John J. Johnson is hereby appointed trustee for the purpose hereinafter provided.

"And it is further ordered, adjudged and decreed that the said complainants are entitled to have, from said defendants, an accounting for the purchase-money received for property sold by their ancestors from whom they respectively claim, and also sold by them respectively, before the filing of the bill in this cause, and also for rents and partition as hereinafter specifically set forth. And for the purpose of ascertaining the respective interests of the several parties, this cause is referred to the Auditor, who shall state:

"*First.* A joint account of said trustees, George W. Hopkins and John S. Hopkins, in which they shall be charged with all moneys received jointly by them from sales of said property bought by them at the sale of May the 10th, A. D., 1864, together with lawful interest on the same from the date of payments to the date of the account. The said trustees shall be allowed, as off-sets to said charges, all sums of money paid by them for taxes or municipal assessments paid, new buildings erected on said property, repairs and betterments thereon, insurance and other lawful charges, together with lawful interest on the same from the dates of payment to the date of the account.

"*Second.* An individual account of each of said trustees in which each shall be charged respectively, with all moneys received by him from sales of said property bought by them or either of them at the said sale of May 10th, A. D., 1864, together with lawful interest on the same, from dates of payment to date of the account. Each of the said trustees shall be allowed as offsets to said charges, all moneys paid by him as taxes on said property, municipal assessments paid, all moneys paid for the erection of new buildings on said property, for repairs, for betterments, insurance and all other lawful charges, together with lawful interest on the same from the dates of payment to the date of the account.

"And whereas each of the following children and heirs-at-law of the said John Hopkins, deceased, the said testator, namely, Emeline V. Lilburn, Elizabeth A. Early, Mary V. Wailes, Alice C. Hall, Isaac H. Hopkins, George W. Hopkins and William M. S. Hopkins, hath severally received two thousand six hundred and sixty-seven dollars and sixty cents ($2.667.60) in the so-called settlement of said estate of March 28, 1865; and part of the same was made up from the consideration money paid by said trustees for the property they bought at said sale; the Auditor will, therefore, also allow the said trustees, as against the party respectively who shall receive

the same, or as against the legal representatives of such party whatever that sum may be, with lawful interest from the dates of payment to the complainants respectively, to the date of the account; but in the event that it is impracticable to ascertain how much of said sum was derived from the sales of said real estate bought by said trustee, then the Auditor shall allow the said entire sum of $2,667.60, with interest, as a credit in favor of said trustees against each of the children of said John Hopkins or their legal representatives on their shares.

"And whereas, the said trustee, George W. Hopkins, has died, and since his death some of the defendants, as heirs of said George W. Hopkins, have sold some of said property bought by said George W. Hopkins at said sale, May 10th, A. D., 1864, and received the consideration money therefor, the Auditor shall state joint and separate accounts as may be necessary, with each of the representatives of the said George W. Hopkins, and said defendant, Bettie Davenport, in which they shall be charged with all moneys received by them, or either of them, from sales of said property acquired through said George W. Hopkins, together with lawful interest on the same from the date of receipts of payment to the date of the account. The said defendants shall be allowed, as off-sets to said charges, all sums of money paid by them or either of them for taxes or municipal assessments paid, new buildings erected on said property, repairs and betterments thereon, insurance and other lawful charges, together with lawful interest on the same, from the dates of payment to the dates of the account. The said defendant shall be respectfully charged with reasonable rent for such of said property where the same was improved and occupied by them or either of them, and where they or either of them have rented the same, they shall be charged with the rent received, with lawful interest on the same to the date of the account. In the statements of these accounts said George W. Hopkins shall be taken as the original owner of one-half

interest of said purchases in squares numbered ninety-four (94), ninety-five (95), ninety-six (96), one hundred and ten (110), and one hundred and eleven (111) in his own right, and the account shall be stated accordingly.

"And, whereas, the said trustee John S. Hopkins has died and, since his death, his representatives, defendants, have occupied and received sums of money for the rent of a portion of said property held by them; the Auditor shall state joint and separate accounts with each of the defendants, Bertha Hopkins (now Hammond) and Esther E. Hopkins; in which they shall be charged with a fair rental for their occupation, and with the rental received by them, respectively, with lawful interest on the same to the date of the account. The said defendants shall be allowed as offsets to said charges, all sums of money paid by them or either of them for taxes; all municipal assessments paid; all sums paid by them for new buildings erected by them; all repaires, betterments, insurance and other lawful charges paid by them or either of them; together with lawful interest on same, from the dates of payment to the date of the account.

"And, whereas, in the settlement of the proceeds of sale of lots three (3), four (4) and five (5), in square numbered sixty-seven (67), known as the Mix property, said George W. Hopkins, trustee, appropriated to himself the sum of $3,525.04 without right; the Auditor shall add to his account to be stated as aforesaid, the said sum with interest from the 18th day of June, A. D., 1872 to the day of the account.

I. "If, on return of the Auditor's report to the Court, and final action of the Court thereon, the representatives of George W. Hopkins, or those claiming through him, including Bettie Davenport, shall pay into Court, within ninety days after said final action, the sum of money found to have been due from George W. Hopkins, and also found to be due from themselves respectively, or those through whom they claim, and if on return of the Auditor's report

to the Court, and final action thereon, the representatives of John S. Hopkins shall pay into Court, within ninety days after such final action, the sum of money found to be due from said John S. Hopkins and also found to be due from themselves respectively, then the Auditor shall proceed to inquire into the practicability of partition of said remaining unsold real estate between the complainants and the defendants according to their respective interests; and if partition is practicable, commissioners shall be appointed to make the same, who shall allot to the defendants, at their value including improvements, as far as can be, such parcels of ground as have been improved by such defendants: It being the intention of this decree to allot, if possible, the improved property to the party who had made such improvements. But if said defendants, respectively, shall fail to pay the entire indebtedness found to be due from both George W. Hopkins and John S. Hopkins respectively, together with such sums as shall be found to be due from themselves respectively, or if partition is impracticable, then the said trustee shall make sale of said unsold real estate in fee simple at public auction, after due advertisement of ten days in two daily newspapers printed and published in Washington, D. C. Terms of sale, one-quarter cash, balance in one, two and three years, with interest, or the whole of the purchase-money, in cash, at option of purchaser.

"And the Auditor shall state an account dividing the net proceeds as follows: One-half of the net proceeds of such sale, namely, the portion belonging to the estate of said George W. Hopkins shall be applied to the payment of the indebtedness found to be due, to wit: the sum which said George W. Hopkins and his repreeentatives respectively had received in excess of said George's one-half interest. This sum together with the other half, namely, the portion belonging to the estate of John Hopkins, shall be eaqually divided among the representatives of John Hopkins. The share belonging to the rep-

resentatives of John S. Hopkins shall be charged with any amount received by him or his representatives respectively, in excess of his or their distributive share as a devisee of John Hopkins. If it shall appear that the defendants, or either of them, as heirs or next of kin of either George W. Hopkins or John S. Hopkins, have received, either from moneys received from their respective ancestors or from sales of said lots in said squares, made by them, said representatives respectively, sums greater than they shonld have received, after deducting the value of their interest in said remaining unsold real estate, then the Auditor shall state an account with each defendant showing how much he or she has received in excess ; and all questions as to the right of the complainants to a decree for such excess are reserved for the future determination of this Court.

"The plaintiffs are hereby awarded the costs of this suit.

"And from the foregoing decree the defendants and each of them pray an appeal to the Supreme Court of the United States, which is allowed.

"E. F. BINGHAM,
"*Chief Justice.*"

Brief.

An examination of the foregoing decree will show that the Court below found as facts—

1. That one John Hopkins, by his will, devised to his brother, George W. Hopkins, and his son, John S. Hopkins, as trustees, the one-half undivided interest in certain squares of ground in the city of Washington, namely, lot 1, in square 94, and squares 95, 96, 110 and 111, in trust to divide among his children at a day named. The other undivided half was the individual property of said George W. Hopkins, trustee.

2. The complainants' equitable title thereto as children and devisees of said John Hopkins.

3. That, on the 10th of May, 1864, the said trustees pretended to sell the said property at public auction, but bought the same in for their own individual benefit by means of an agent, one James Chapman.

4. That subsequently to the purchase the said trustees, and after them the appellants, as heirs-at-law of said trustees, sold portions of said property to *bona fide* purchasers, for value, without notice of the equities of the appellees; but that certain portions of said property described specifically remain unsold and in the possession of the said appellants as heirs-at-law of the said trustees.

5. That the complainants (appellees) have not acquiesced in the fraudulent conduct of said trustees, nor been guilty of laches in not sooner asserting their rights.

The Court then decreed—

1. That the decree of the Special Term be reversed.

2. That the equity of the cause was with the complainants.

3. That the pretended sales and purchases by the trustees, at their own sale, were fraudulent and void, and the same were set aside, except as to all those portions which had been sold to *bona fide* purchasers, whose titles were to be in nowise affected by this decree. But the purchase-money derived from the said sales was to be deemed a part of the trust estate in lieu of the land, and a lien on the shares of the appellants in the unsold property.

4. That the pretended titles of the appellants under said purchases by the trustees to the unsold land were divested and a trustee of the same appointed.

5. That the complainants were entitled to an accounting for the property sold to strangers, and for rents received from the unsold property.

a. "If, on return of the auditor's report to the court, and final action of the court thereon," the appellants should pay into court, within ninety days, "after said final action," the sums found to be due by the account, then the appellants as heirs-at-law of the trustees were to be relieved of the lien, on their shares of the property, for the purchase-money received by them from strangers in excess of their shares as heirs; and the auditor was to inquire if partition among all entitled was practicable; and if so, commissioners were to be appointed to make it.

b. If the appellants did not pay what was found to be due, as aforesaid, after final action of the court on the auditor's report, (or if they paid), and parti-

tion was found impracticable, then the trustee was to sell at public sale.

6. That the auditor shall in the case of sale state an account for the distribution of the proceeds of sale.

7. All questions of the right of the complainants to a personal judgment against such appellees who have received from sales to strangers more than their shares in the unsold property, were reserved for the future determination of the court.

8. The complainants were awarded costs.

From the foregoing bill and decree, it is apparent, we submit, that the decree was only interlocutory.

1. Because it did not dispose of the issues or litigation.

The bill alleges sales to strangers by the appellant of the property belonging to the appellees, and prays that these sums received may be a lien on the appellants' shares of the unsold property, and that these sums may be ascertained, fixed, and rendered definite by an accounting.

No account has been taken. The Court ordered it, but the appellants have staid its hand by this appeal.

2. No (right or title or) possession of the appellants, or any one of them, have been disturbed by the decree.

On the contrary, they are not required to surrender possession, or pay any money, or do any other act until the auditor shall have rendered the account and the court's final action thereon; and then not until ninety days thereafter.

3. If this appeal is sustained, it is apparent that the appellants will have two appeals to this court.

After the appellees will have been compelled to wait until this case is reached and affirmed, the case will then be returned to the court below to proceed with the account. When the account is taken it will be in the power of the appellants to object to it, and sue out a second appeal claiming error in the principles on which it is stated.

Thus six years may easily be consumed in appeals.

4. For an appeal to be final the decree must be such as that the court below has nothing to do but execute it. Here scarcely half of this litigation is over. The rights of the appellees in more than half of their inheritance is unascertained and undefined, and which was specially prayed in the bill should be defined.

5. The authorities are clear and uniform as to the rule of law.

The case of *Grant* vs. *Phœnix Insurance Co.*, 106 U. S., 429, is quite similar in all its essential elements to the present case.

After elaborate consideration and review of all the authorities, the court held that—

"The rule is well settled that a decree to be final, within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeal, must terminate the litigation of the parties *on the merits* of the case, so that, if there should be an affirmance here, the court below would have nothing to do but to execute the decree it had already rendered."

The court, therefore, dismissed an appeal by the defendant as not being final, the appeal being from a decree wherein, upon the merits, the court over-

ruled the defense set up in the case, and declared the complainant to be the holder of the mortgage; but, wherein, also, the court, in order to ascertain the amount due to defendant and other lien creditors, and for taxes, refered the case to a master and appoint a receiver to take charge of the property. But the court did not find the amount actually due, nor order a sale of the mortgaged property. A reason, amongst others, given by the court (page 49) why this was not held "final" is, that it did not find the amount due on the mortgage, and without this no sale could be ordered. The court remarks:

"Final process for collection of money cannot issue until the amount to be paid, or collected by the process if not paid, has been adjudged. * * * The present decree is not final according to this rule. It does not order a sale of the property. It overrules the defense of the appellant as set forth in his cross-bill, and declares that the appellee is the holder and owner of the debt secured by the deed of trust, but refers the case to an Auditor to ascertain the amount due upon the debt; the amount due certain judgment and lien creditors, the existence and priority of liens and the claims for taxes."

In the case at bar, the court found only that the purchase by the trustees at their own sale was fraudulent and void; that in consequence of said purchase the complainants were entitled to an accounting against said trustees and their heirs for the amount of proceeds of sales of portions of said property to *bona fide* purchasers, and for that purpose the cause was referred to the Auditor of the Court.

"That after the Auditor's report to the court, and *final action* of the court thereon," the defendants should respectively pay what was found thereby to be due by them respectively, the case should again a second time go back to the Auditor to enquire into the practicability of a *partition between the complainants and defendants* according to their respective interests, and if partition was found to be practicable, the court was then to appoint commissioners for partition.

It is only after the Auditor's report, his finding the amount due by the defendants respectively, and after its return to the court (where it will lay for one whole term, subject to exceptions), and after the court shall pass upon the Auditor's report, either affirming or reversing it, that the defendants are to pay, or their possession of the property is to be disturbed.

At this moment there has been no reference to the auditor, as the appeal was prayed *instanter*; and all proceedings superseded. If no further steps were taken by the complainants in proving their case before the auditor on accounting, the possession of the appellants could never be disturbed, as they are required to pay nothing, and to do nothing, until the amount of their indebtedness is ascertained by the court in its action on the report of the auditor. The decree is therefore clearly interlocutory. The court having passed simply upon the question of the invalidity of the purchase by the trustees at their own sale and the *resulting legal* obligations of the parties.

This is precisely the dicision of the court in *Grant* vs. *Phœnix Insurance Company, supra.*

There the court dismissed the appeal of a defendant in a foreclosure suit, because it neither found the amount due, nor ordered the sale of the mortgaged property, although it overruled the entire defence on the merits of the controversy.

The cause at bar is even yet more similar to the case of *Railroad Company* vs. *Swasey*, 23 Wal., 405.

In this case it was held that a decree of foreclosure and sale is not "final" in the sense which allows an appeal from it so long as the amount due upon the debt is undetermined.

"Until this is done the rights of the parties are not all settled. Final process for the collection of money cannot issue until the amount to be paid or collected by the process, if not paid, has been adjudged. * * * Such adjudications require the action of the court. *A reference to a master to ascertain and report the facts is not sufficient.* A master's report settles no rights. Its office is to present the case to the court in such a manner that intelligent action may be there had, and it is this action by the court, not the report, that finally determines the rights of the parties. With these well-settled principles as our guide, it is easy to see that the decree here appealed from is not final. The amount of the debt which the State must pay in order to stop the sale has not been determined. * * * They must be settled before the litigation can be said to be at an end. The amount of the debt and the proportion of stock applicable to its payment are, therefore, still open for future adjudication between the parties. Thus far the court has done no more than declare that for the security of the payment of so much as is due, the plaintiff and those he represents have a lien upon their equitable proportion of the stock, and that the lien may be enforced by sale if payment of the debt is not made. It has also declared its determination to order a sale if payment

of the debt is not made or satisfactorily provided for by April 1st, 1875. * * * In this, as it seems to us, the court has acted upon the suggestion in *Forgay* vs. *Conrad*, 6 How., 201, and by an interlocutory order announced the opinion it had formed as to the rights of the parties and the principles of the decree it would finally render, leaving the entry of the final decree in form to be made when the amount due has been ascertained and an apportionment of the stock made. In this way the rights of all parties can be protected and no injustice done."

In the case at bar the court has followed almost identically the decree in the above case, only substituting the facts which belonged to this litigation. It declares the title of the appellants to be void, and refers the case to a master to ascertain and report to the court the amount of money the appellants owe the complainants in consequence of the frauds; after final action thereon and the amount is ascertained, the defendants shall pay such amount into court within ninety days, if they do, the land described in the bill shall be partitioned; if they do not, it shall be sold, and the case again referred for the third time to the auditor to state the interests of the appellants and complainants in the proceeds of sale; and if the proceeds of sale show that the appellants have received an excess over their share of the property, "all questions as to the right of the complainants to a decree for such excess are reserved for the future determination of this court."

Again, similarly to the case at bar is that of *Barnard* v. *Gibson*, 7 How., 650, in which it was decided that a decree for an injunction, in a patent cause, and *a reference to a master to take an account of profits is not final, and an appeal does not lie therefrom.* In the above case the court said:

"It is supposed there was a departure from this uniform course of decision at the last term, in the case of *Forgay* v. *Conrad*, 6 How., 201." In that case the court says: "The decree not only decides the title to the property in dispute, and annuls the deeds under which the defendants claim, but also directs the property in dispute to be delivered to the complainant, and awards execution, and according to the last paragraph in the decree, the bill is retained merely for the purpose of adjusting the accounts referred to the master.

"In all other respects, the whole of the matters brought into controversy by the bill are finally disposed of as to all of the defendants, and the bill as to them is no longer pending before the court. If these appellants, therefore, must wait until the accounts are reported by the master and confirmed by the court they will be subjected to *irreparable injury*. The decree, in that case, would have been executed by a *sale of the property*, and the proceeds distributed among the creditors of the bankrupt, and lost to the appellants, before the minor matters of the account referred to the master could be adjusted and acted on by the court."

The comments of the court on the case of *Forgay* vs. *Conrad*, are given in full in order that the court may see at a glance it was not the same as the case at bar.

In the present suit, no property is directed to be given up, no payment of money to be made until after an account is stated by the master, and returned to the court, and "its final action thereon." And it is only after this final action, and the amount in which each appellant is indebted has been finally ascertained, that they are, respectively, called upon to pay the sums so found to be due within ninety days after final action of the court, and if default shall

then continue, the property is then, and not till then, to be sold. The court, in the case at bar, could not have decreed otherwise, as the respective indebtedness of the respective appellants are each and all dissimilar, one from the other, and each and all unascertained. The account is resorted to and required in order to make certain and inform the court of the amount in which each is, respectively, indebted. Until this is ascertained by the terms of the decree they are not in default.

Another very similar case was decided in *Crawford* vs. *Points*, 13 How., 11, and which is cited with approbation in 106 U. S., 429. This was a suit by an assignee in bankruptcy to declare fraudulent and void certain settlements and transfers of the property made between the bankrupt and the appellant. The court held the decree was not final, saying:

"An account is directed to be taken of the rents and profits of certain lands, with an option to the appellant to purchase them at a price named in the decree, and in that event he is to be discharged from the account for rents and profits. And moreover, he is permitted to retain possession of certain slaves until it should be ascertained whether the other assets of the bankrupt's estate would not be sufficient to pay his debts, and an order to account for their hire and the profits of their labor is suspended in the meantime. While these things remain to be done, the decree is not final, etc."

In the present case as already remarked, the appellants' possession is not disturbed until after the court shall make another decree, ascertaining the amount due by them respectively after the auditor's report.

Humiston vs. *Hainthorp*, 2 *Wal.*, 106.

"A decree in chancery awarding to a patentee a permanent injunction and for an account of gains and profits, and that the cause be referred to a master to take and state the amount, and to report to the court, is not a final decree, within the meaning of the act of Congress allowing an appeal on a final decree to this court." Cited with approbation in 106 U. S., 429.

In *Craighead* vs. *Wilson*, 18 *How.*, 199, a bill was filed claiming property as heirs. A decree was made which, among other things, referred it to a master to take an account. The court held that this decree was interlocutory, and that no final decree could be made until after the coming in of the master's report, and the appeal was dismissed.

In *Pulliam* vs. *Christian*, 6 *How.*, 209, an assignee in bankruptcy filed a bill to impeach conveyances of the bankrupt; the court decreed a trust deed should be set aside, and all the matters arising under the trust, were referred to a commissioner for a statement of the account, to enable the court to enter a final decree.

"There is no sale or change of the property ordered which can operate injuriously to the parties. Under such circumstances, the decree not being final as to the whole matter in controversy, the appeal must be dismissed."

In *Perkins* vs. *Fourniquet*, 6 *How.*, 206.

A decree, that a community of acquests and gains existed between husband and wife, and ordering an account to be taken, is not final, and an appeal does not lie.

"This clearly is not a final decree in any respect. It is the common and ordinary interlocutory order or decree passed by courts of chancery in cases of this kind, *and is absolutely necessary to prepare the case for a final hearing and final decree, wherever the complainant is entitled to a partition of property or an account.* For the principles upon which an account is to be stated by the master, or a partition made, cannot be prescribed by the court until it first determines the rights of the parties by an interlocutory order or decree; and the case cannot proceed to final hearing without it. And the appellant is not injured by denying him an appeal in this stage of the proceedings. Because these interlocutory orders and decrees remain under the control of the Circuit Court, and subject to their revision, until the master's report comes in and is finally acted upon by the court, and the whole of the matter in controversy between the parties disposed of by a final decree. And upon an appeal from that decree, every matter in dispute will be open to the parties in this court, and may all be heard and decided at the same time."

The decree of the court below in the present case, in passing upon the rights of the parties, and declaring the sales of trustees to themselves to be void, and that the equities of the case are with the complainants, and directing on what bases the accounts shall be stated, is approved in *Forgay* vs. *Conrad*, 6 How., 205, in *Perkins* vs. *Fourniquet*, 6 How., 206, as above cited, and in *Railroad Company* vs. *Swasey*, 23 Wal., 405.

The case of the *St. Louis Railroad* vs. *Southern Express Co.*, 108 U. S., 24, is, as the Chief Justice says, clearly distinguishable from *Grant* vs. *Phœnix Ins. Co.*, 106 U. S., 429—

"The suit in the former case was brought to compel the railway company to do the express company's business. The controversy was about the right of the express company to require this to be done on the payment of lawful charges. It was no part of the object of the suit to have it definitely settled what these charges should be for all time. * * * * * Nothing remains to be done by the court to dispose of the case. Inasmuch as the rates properly chargeable for transportation vary according to circumstances, and what was reasonable when the decree was rendered may not always continue to be so, leave is given the parties to apply for a modification of what has been ordered in that particular if they, or either of them, shall desire to do so. In effect, the decree requires the railway company to carry for reasonable rates, and fixes, for the time, the maximum of what will be reasonable. The controversy which the express company has had referred to the master about the compensation to be paid for the transportation during the pendency of the suit, does not enter into the merits of the case. All such matters relate to the *administration of the cause*, and the accounts to be settled under the present order are of the same general character as those of a receiver who holds property awaiting the final disposition of a suit. They are incidents of the main litigation, but not necessarily a part of it."

The court, by examining the bill will see that it is charged by the bill that the trustees and the appellants, as their heirs, have sold large portions of the trust property to *bona fide* purchasers (which fact is found by the decree) and it therefore prays that the sums so received may be a lien on the shares of the appellants in favor of the complainants, and that an account may be taken to ascertain this indebtedness, and consequently the respective rights of the appellants and complainants in the remaining

unsold property. By the decree the court has simply found the fact that the complainants are in consequence of the fraudulent conduct of the trustees entitled to an interest in the property, but how much, or how little, has not been determined because no judicial account has been taken. The court has not done more than half its work. There can be no final decree until the respective interests of the parties are ascertained.

Again in ex parte Norton, 108 U. S., 237, an assignee in bankruptcy filed a bill to set aside, as fraudulent, conveyances of real estate of the debtor made before the bankruptcy and a mortgage put upon the same by the owner after the sale, and to restrain the foreclosure of the mortgage. "The court refused to set aside the proceedings or to order a conveyance, but did order the sale to go on, *and that the proceeds, after the mortgage was satisfied, be paid to Norton.*" The court held that this was a termination of the litigation between the parties.

In the case at bar the evidence shows the complainants are as much interested in the account which they pray for, of the property sold to strangers, as in that remaining unsold, because the trustees and the appellants have sold property for which they have received more money than the appellants' interest in the unsold land. To ascertain these facts, namely, whether the appellants have any interest at all in the unsold land and if so how much was the object of the prayer for an account, and the order of the decree awarding such account.

In *Winthrop Iron Co.* v. *Meeker*, 109 U. S., 180, stockholders in a corporation filed a bill praying to have proceedings at a meeting of stockholders in the

corporation and proceedings of the board of directors, under a supposed authority derived therefrom, set aside as fraudulent and void, and a receiver appointed. The court below made a decree setting aside the proceedings and appointed a receiver; and added to the decree a clause, reserving to itself such further directions respecting costs, &c., as might be necessary to carry the decree into execution. An appeal being taken, a motion was made to dismiss the appeal on the ground that the decree was not final, Held, 1. That the decree was final as to all the relief prayed for in the bill; and 2. When a decree decides the right to and possession of the property in contest, *and the party is entitled to have it immediately carried into execution*, it is a final decree, although the court below retains possession of so much of the decree as may be necessary for adjusting accounts between the parties."

Tested by both of these citeria the present decree is only interlocutory.

1. An account showing the interest of the complainants in the property sold to strangers by the appellants is distinctly prayed for, and the sum found to be due by them is also prayed to be made a lien on the interest of the appellants in the unsold estate.

2. The possession of the appellants is not disturbed until after this account is settled by the court, nor are the complainants entitled to any immediate execution of the decree; in fact, no execution is awarded. All execution is postponed by its express terms until after the account.

In *Dainese* vs. *Kendall*, 119 U. S., 53, which was a suit by Dainese to set aside a sale made by a trustee to one Kendall, to charge Kendall with the rents re-

ceived by him, and for an account between Dainese and Kendall. The court, at special term, set aside the sale, but before anything further was done Kendall appealed to the general term. At the general term the order of the special term was reversed, the sale ratified and confirmed, and the cause remanded back "for further proceedings;" Dainese thereupon appealed. The court say :

"From this statement it is apparent that the decree appealed from is *not* a final decree within the meaning of that term as used in the statute allowing appeals to this court. The litigation of the parties on the merits of the case has not been terminated. An account of the rents collected by Kendall while in possession has not been taken ; and the amounts due Dainese and Kendall respectively on the notes which they severally hold have not been ascertained. All this is necessary for the purposes of the relief asked for in the bill, and the cause was sent back from the general term for further proceedings on that account. The authorities are uniform to the effect that a decree to be final for the purposes of an appeal, must leave the case in such a condition that if there be an affirmance here the court below will have nothing to do but to execute the decree it has already entered."

The above opinion could have been written for the case at bar.

In *Burlington R. Co.* vs. *Simmons*, 123, U. S., 52.

A decree in a suit in equity to foreclose a mortgage, which determines the validity of the mortgage, and, without ordering a sale, directs the cause to stand continued for further order and decree upon the coming in of a master's report, is not final for

the purposes of an appeal. *Parsons* vs. *Robinson*, 122 U. S., 112, and *First National Bank of Cleveland* vs. *Shedd*, 121 U. S., 74, were distinguished in the above case and held not to be applicable to the principles there laid down.

"The litigation has not been ended; the terms of the redemption have not been fixed, and the fore closure sale awaits the further judicial action of the court. In short, nothing can be done towards carrying the decree into effect until the further order or decree for which the cause was continued. This is shown more than once on the face of the decree, and consequently the decree is, in fact, what the court took care to say it was—'interlocutory' only, and not final for the purposes of an appeal."

This, we believe, is the last judicial utterance by the Court on this subject, and is an affirmance of the unbroken line of authority that where the relief prayed has not all been passed upon, and before the possession of the appellants can be disturbed some other and further decree of the court must be made, such decree is not final.

It would be tiresome to show again how the decree in the present case lacks both of these essential elements of finality.

Alternative Motion.

In the event that the Court should decide that the said decree is final, and the appeal well taken, the appellees move the Court to order, under pain of vacating the supersedeas granted said appellants, that they, the said appellants, shall file in your honorable Court, by some reasonable day, a further bond, with approved sureties, for an additional sum of

ten thousand dollars; and the appellees assign as reasons therefor, as sustained by affidavits filed, that the annual rents for which by the terms of the decree the appellants are accountable, amount to three thousand five hundred and fifty dollars per annum; that in three years, the probable delay caused by the appeal, the sums so received by the appellants will amount to ten thousand six hundred and fifty dollars; that said appellants have filed a bond only in the penal sum of five thousand dollars; and that the presentation and approval of the said bond were procured in the absence of the appellees' solicitors, without notice to them or either of them, and without their knowledge or consent; and that the said bond is insufficient to cover the damages which will be caused by said appeal.

Bond.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

WILLIAM B. HOPKINS and others
vs.
BERTHA HOPKINS and others. } No. 8,953, Equity.

Know all men by these presents, that we, Bertha Hammond, sued as Bertha Hopkins, for herself, and as administratrix of John S. Hopkins, deceased; Esther Hopkins, Elizabeth B. Luttrell, Ira W. Hopkins, Mary E. Hopkins, Bettie Davenport, Samuel C. Raub, trustee for Bettie Davenport, and executor of George N. Hopkins; Thomas J. Luttrell, administrator of George W. Hopkins, and executor of Cornelius Hopkins, defendants in the above-entitled cause, principals, and George T. Raub and George J.

Johnson, sureties, are bound unto William B. Hopkins, Anna B. Hopkins, Sarah E. Hopkins, Elizabeth A. Early, Mary V. Wailes, Alice E. Hall, and Ida M. Stone, complainants in the said cause, in the sum of five thousand dollars ($5,000). lawful money of the United States, to be paid to the said William B. Hopkins, Anna B. Hopkins, Sarah E. Hopkins, Elizabeth A. Early, Mary V. Wailes, Alice C. Hall, and Ida M. Stone, or their certain attorney, executors, administrators and assigns. To which payment, well and truly to be made, we bind ourselves jointly and severally, and our, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 12th day of July, 1888.

Whereas, the above named defendants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the said cause by the Supreme Court of the District of Columbia.

Now, therefore, the condition of the said obligation is such that if the above-named defendants shall prosecute the said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void ; otherwise, the same shall be in full force and virtue.

BERTHA HAMMOND.	[SEAL.]
ESTHER E. HOPKINS.	[SEAL.]
ELIZABETH B. LUTTRELL.	[SEAL.]
IRA W. HOPKINS.	[SEAL.]
MARY E. HOPKINS.	[SEAL.]
BETTIE DAVENPORT.	[SEAL.]
SAMUEL C. RAUB.	[SEAL.]
THOMAS J. LUTTRELL.	[SEAL.]
G. T. RAUB.	[SEAL.]
GEO. J. JOHNSON.	[SEAL.]

Signed, sealed and delivered in the presence of—
JOB BARNARD, as to all, except
BERTHA HAMMOND,
E. STANLEY TOODRIN, witness as to
BERTHA HAMMOND.

I hereby certify that the sureties in the above bond, G. T. Raub and George J. Johnson, are amply sufficient for the penalty thereof.

W. D. DAVIDGE.

July 14, 1888.

The foregoing bond is hereby approved and ordered to operate as a supersedeas.

CHARLES P. JAMES,

July 14, 1888. *Justice.*

Affidavit.

DISTRICT OF COLUMBIA, } to wit:

Personally appeared in the District aforesaid before me Charles T. Drury, a Notary Public for the District aforesaid, J. W. Pilling and George W. Stickney, who being duly sworn according to law, did make oath and say, that they are respectively citizens of Washington, D. C., that for a number of years they have been engaged in the business of real estate agents; that the requirements of their said business have made them familiar with the rental values of improved property in said city; that subdivision lots numbered seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two in square number ninety-six (96) are improved by six two-story brick dwellings with back buildings, that the same

FILED.
NOV 9 1891
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 62.

BERTHA HAMMOND (SUED AS BERTHA HOPKINS), INDIVIDUALLY, AND AS ADMINISTRATRIX OF JOHN S HOPKINS, DECEASED, ET AL.

Appellants,

v.

WM. B. HOPKINS ET AL.

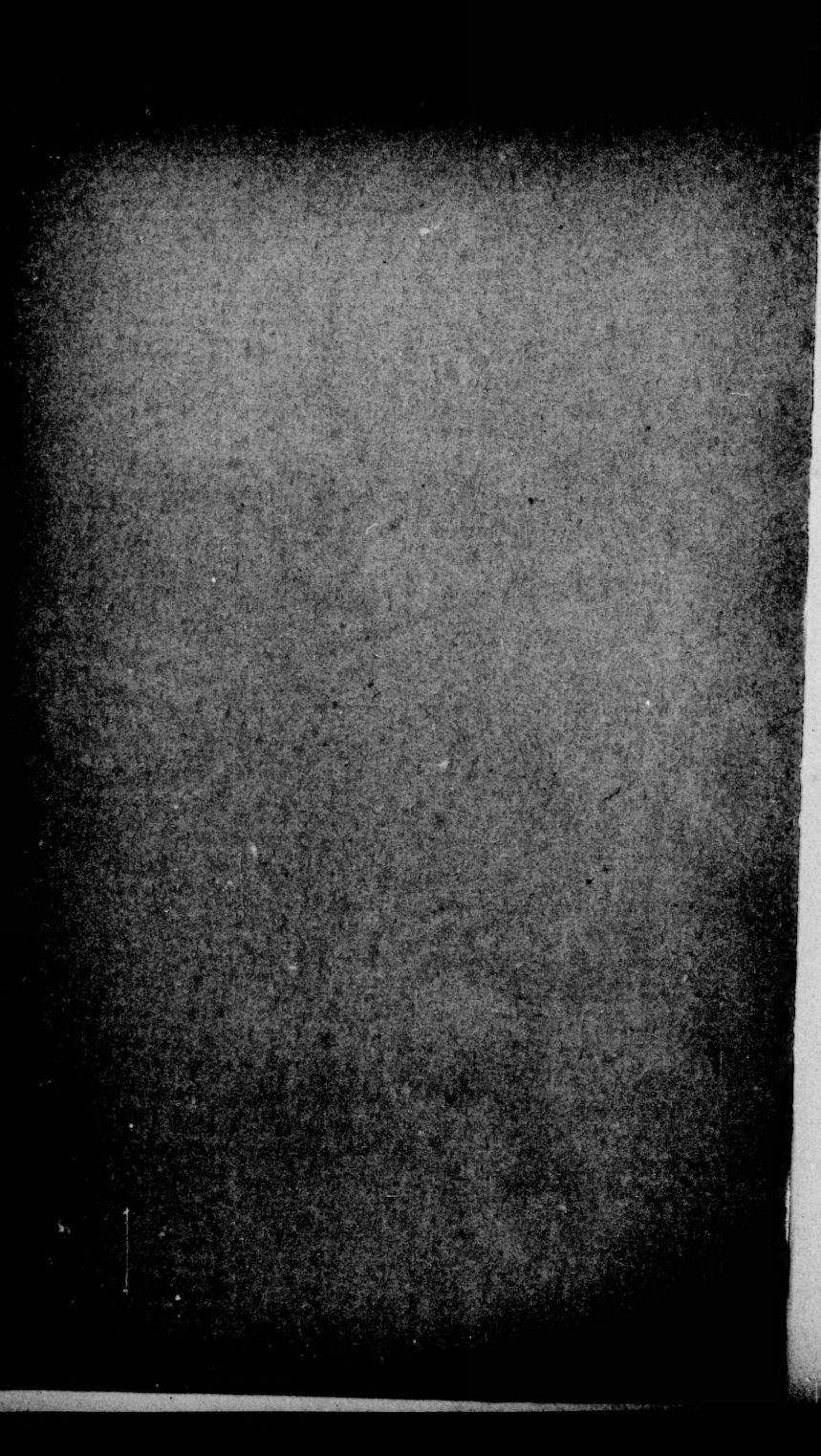
Appellees.

ADDITIONAL BRIEF FOR APPELLANTS.

GEORGE F. EDMUNDS,
W. D. DAVIDGE,
of Counsel.

W. D. DAVIDGE,
SIDNEY T. THOMAS,
HENRY WISE GARNETT,
Solicitors for Appellants.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1891.



Supreme Court of the United States.

OCTOBER TERM, 1891.

BERTHA HAMMOND (SUED AS BERTHA HOPKINS), INDIVIDUALLY AND AS ADMINISTRATRIX OF JOHN S. HOPKINS, DECEASED, ET AL.,
APPELLANTS,
v.
WILLIAM B. HOPKINS ET AL.,
APPELLEES.

No. 62.

Additional Brief for Appellants.

The brief for the appellees, filed in this Court, contains, between pages 1 and 18, inclusive, what purports to be a "Statement of the case," and it is declared in the brief that this statement sets forth the important facts of the case justly and truly, (page 1).

Now, this statement does *not* set forth the facts justly and truly. On the contrary, it contains misstatements of fact so gross and glaring, and so calculated to mislead the Court, that we deem it our duty to call attention to a few of them. It will be observed that in the statement the appellees nowhere verify any allegation of fact *by a reference to the record*. Every assertion made by us will be supported by a reference to the pages of the record.

The rest of the appellees' brief after the statement (pages 18–140) also contains misstatements of fact, but as that portion of the brief is in the nature of an argument we will not point out the misstatements of fact therein.

On page 3 of appellees' brief, Isaac H. Hopkins is described as a "young man" at the time of the public sale in May, 1864. The fact is he was then *at least forty.* Mrs. Lilburn testifies *he was the oldest of John Hopkins' sons* (R. 389), and William M. S. Hopkins, *a younger brother*, testifies that he (William) was thirty-three years old at the time of the sale. (R. 108.)

On page 3 of appellees' brief George Washington Hopkins is also described as a "young man" at the time of the sale. The fact is he was *then about thirty-five* (R. 45, 46), married, *and then had a son five years old.* (Bill, par. 6, R. 2.)

On pages 3 and 4 of appellees' brief it is stated that William M. S. Hopkins from "August, 1864, and continuing interruptedly until about 1870, he was confined three times in the U. S. Hospital for the Insane as a dipsomaniac." This statement is misleading. It is true he was sent three times to the Hospital, but it is not true that his confinement was "continuous" from 1864 to 1870. On the contrary, the official register of the Hospital shows that he was admitted the *first* time to the Hospital August 13, 1864, and discharged September 2, 1864; *time in Hospital*, 19 *days.* (R. 251). He was admitted the *second* time on the 19th of January, 1865, and discharged on the 23d of March, 1865; time in Hospital, *two months and four days.* (R. 252.) He was admitted the *third* time September 19, 1868, *more than three years after the second discharge*, and discharged August 6, 1870. (R. 252). How

this can be called a *continuing* confinement from 1864 to 1870 is beyond our comprehension.

On page 4 of appellees' brief it is stated that Dr. Godding and Dr. Franklin pronounced William M. S. Hopkins "utterly incapable of enforcing his rights or attending to any business" *from* 1864 *to* 1870. This statement is absolutely untrue. Dr. Godding *nowhere* in his testimony (R. 251–263) says *one word* to the effect that previous to his *third* admission to the Hospital on September 19, 1868, when he received a serious blow on the head from a policeman's billy, he was incapable of enforcing his rights or attending to business; and as to Dr. Franklin (R. 1248–1250, 1251–1254), so far from saying anything about William's mental condition previous to his *third* admission to the Hospital, there is no evidence whatever that Dr. Franklin was at the Hospital before September 19, 1868, the date of the third admission (R. 1248, 1251), *and there is no evidence whatever that before that date he knew, or had ever seen, William M. S. Hopkins.* (R. 1251–1253.) The evidence showing what William's mental powers really were from 1864 until after the commencement of this suit is fully set forth under POINT IX of our original brief at pages 119–127.

On page 5 of appellees' brief it is stated that the testimony for the appellants conclusively shows that *before* the arrival of Alice to the age of 18 years, the trustees determined "to sell the entire interest and buy almost the bulk of it for themselves;" and that the appellants contend that this determination "was communicated to the children, *with a promise* that they would give as much for it as any one else." This statement is untrue. It is *nowhere* stated in the appellants' testimony, directly or indirectly, that the trustees determined to buy *before the arrival of Alice to*

the age of eighteen years; and the appellants have never contended and do not contend that the intention to buy was communicated to the children, *with a promise* that they would give as much for the property as any one else. The appellants' testimony simply shows that *before the sale* the trustees told the children of John Hopkins that they intended to buy the property and continue the business, and none of them objected. (R. 764, 747, 803, 755, 756.)

On page 5 of appellees' brief it is stated that squares 95 and 96 were advertised as a brick-yard, "but this property was utterly worthless as a brick-yard." To show how utterly untrue this statement is, it is only necessary to state that the trustees, after their purchase, continued to use these two squares as a brick-yard *until the death of George W. Hopkins in* 1875, *eleven years after the sale* (R. 641, 404, 405, 803, 756), *and in* 1867, 1868, *and* 1869 *clay for the manufacture of bricks was dug from these squares.* (R. 614.)

On page 6 of the appellees' brief it is stated that after the trustees became the owners of squares 95 and 96, "square 96 was subdivided into 58 lots, and sold by such subdivision, and square 95 was sold in lots according to the original subdivision." This statement is *misleading* in omitting to state the *important fact* that square 96 was not subdivided by the trustees into 58 lots *until Oct.* 20, 1877, *more than thirteen years after the public sale of* 1864. (See plat Exhibit R. S. B. No. 20, being the eighth of the series of plats, between pages 1264 and 1265 of the record, *and the certificate of the trustees at the foot of it;*) and not a foot of ground in square 95 was sold by the trustees or their representatives *until* 1878, *more that fourteen years after the sale of May* 10, 1864. (See Abstract of Conveyances, R. 344–359.)

On page 7 of appellees' brief it is stated there was no competition at the sale of squares 95 and 96 (the brick-yard). This statement is untrue, for Richard E. Sinclair testifies that he was in the crowd when the brick-yard property was cried by the auctioneer, and that there was *more than one bid, and there may have been three.* (R. 953.)

On page 8 of appellees' brief it is stated that "no defence is offered and no excuse is made for the sale of square 111 as a whole." This statement is untrue, as will appear by reference to POINT VI of our original brief at pages 94–108.

On page 9 of appellees' brief it is stated that on the 20th of May, 1864, ten days after the sale, the trustees executed a deed to Chapman reciting a consideration of one dollar, and on the same day George W. Hopkins received a deed from Chapman having the recital that Chapman had sold to George W. Hopkins square 111 *for* $9,093.44, and another deed to George W. Hopkins and John S. Hopkins having the recital that Chapman had sold to them squares 95 and 96 and parts of 94 and 110 *for* $10,-840.24. Now the consideration expressed in the deed from Chapman to George W. Hopkins individually is *not exactly* $9,093.44, as stated in the brief (R. 22, 23), and the consideration expressed in the deed to George W. and John S. Hopkins is not *exactly* $10,840.24, as stated in the brief (R. 21). It is true the considerations stated in the brief vary very little from the considerations *expressed in the deeds*, but the *exact figures* are of importance to our case, for the consideration expressed in the deed from Chapman to George W. and John S. Hopkins is the *exact aggregate amount* or which Chapman purchased the property described *in*

said deed at the public sale (R. 266); the consideration expressed in the deed from Chapman to George W. Hopkins (R. 23) is the *exact amount* for which Chapman purchased the property described *therein* at the public sale (R. 266). The reason for delaying to record these deeds until November 16, 1864, is fully explained under POINT XIII of our original brief at pages 117–119.

On page 9 of appellees' brief it is stated that the trustees went into the Orphans' Court and had an account stated by the Register of Wills, involving the settlement of the trusts of the will in the sale of the real estate, "*and by an ex parte proceeding* caused the Court to pass upon their account." Now the proceedings in the Orphans' Court were not *ex parte* and without notice, as is fully shown under POINT X of our original brief at pages 136–152.

On page 10 of appellees' brief it is stated that *every child* of John Hopkins (referring to the four sisters) "swore she was ignorant of the purchase of the property by the trustees until informed by S. L. Phillips, a few days before the institution of this suit." This statement is not true, for Mrs. Early *nowhere* testifies, directly or indirectly, that she did *not* know at the time of the sale or after the sale *that the trustees were the real purchasers at the sale* (R. 441–464), and Mrs. Wailes *nowhere* testifies, directly or indirectly, that she did not know at the time of or shortly after the sale that the trustees were the real purchasers at the sale. (R. 495–519.)

On page 10 of appellees' brief it is stated that every child of John Hopkins (referring to the four sisters) swore that it had been represented to them at the time of the sale that a bricklayer had bought the property, "*and that subsequently their uncle and brother had bought of him.*"

That part of this statement in italics is untrue. Neither Mrs. Lilburn, nor Mrs. Wailes, nor Mrs. Hall swears that it was *represented to her* after the sale that her uncle and brother had bought from the bricklayer. These three women simply swear that soon after the sale they knew that George W. Hopkins and John S. Hopkins *owned the property*, and *supposed* they had bought it back from the bricklayer, *but they made no inquiry.* (R. 404, 405, 513, 497, 467).

On page 10 of appellees' brief it is stated that the four sisters swore that it was *represented to them by the trustees that the sale was bona fide.* This statement is untrue. Neither Mrs. Early nor Mrs. Wailes nor Mrs. Hall swears anything of the kind. (See their testimony, R. 441–464, 495–519, 465-494.)

On page 10 of appellees' brief it is stated that, on cross-examination, every witness for appellants, with a single exception, admitted that she could not identify any one of the appellees as having received the information that the trustees *were to be the purchasers.* This statement is untrue, and to show that it is untrue we call attention to the testimony of Elizabeth J. Dashiell (R. 746–754); Adeline Hopkins (R. 802–808); Eliza Dashiell (R. 809–820); Esther E. Hopkins (R. 760–801), and other witnesses for defendants.

On page 12 of appellees' brief it is stated that under the power given to the trustees by the will they sold 36 lots in square 110 at private sale, before the public sale of May 10, 1864, realizing about $3,741.70 from them, one-half of which was the property of the children of John Hopkins, "*and none of which was returned in their statement to the Orphans' Court, or ever paid over to the appel-*

lees." That part of this statement in italics is untrue, for the item of $14,952.66 in their account filed and allowed in the Orphans' Court (R. 1199, 1200) includes (among other things) *one-half* of all the purchase moneys arising from sales made *at any time* by the trustees of real estate in which John Hopkins was interested *from the time of his death in* 1858 *until the account was rendered.* (R. 1199, 1200.)

On page 13 of appellees' *brief* it is stated that *it is admitted in the answer that the deed from William M. S. Hopkins to John S. Hopkins, dated July* 7, 1860, *was a trust.* This statement is untrue and misleading. Bertha Hammond, in her separate answer, says: "I am informed and believe that the said deed, absolute on its face, was *availed of* by my father solely as a security, and for the protection of his brother, the said William M. S. Hopkins, who was addicted to gross intoxication, and that the full share of the latter in the estate of his father was duly accounted for and paid to him. *As to the consideration of said deed I have no information or belief.*" (R. 1211, 1212.) This certainly is very far from the admission pretended as to the character of the deed. Mrs. Hammond simply says she is informed and believes it was "*availed of*" for certain purposes, and as to the consideration of the deed she declares *she has no information or belief.* As to *all the other defendants*, they say, in their answers, "that said deed, *absolute on its face*, will not, after this lapse of time and the death of John S. Hopkins, the party charged with fraud in procuring it, be disturbed." (R. 1206.) The consideration expressed in the deed is $3,000. As the deed was made *nearly twenty-four years before the commencement of this suit*, and as the trustees were dead at its commencement,

the defendants were not able to learn anything of its history, but not one of the defendants admits it was a trust. In this connection read the next two paragraphs.

On pages 13 and 14 of appellees' brief it is stated that on the 29th of January, 1864, four months before the sale of May 10, 1864, William M. S. Hopkins conveyed all his share of his father's estate to Christopher Ingle, as trustee, for the benefit of his wife, Sarah E. Hopkins, and that *in* 1873, Mrs. Hopkins, who was then living in Baltimore, wrote to John S. Hopkins, asking for the payment from the sale of some lots, *and sending him the number of the record of her deed*, and that, *on August* 27, 1873, John S. Hopkins replied to the letter, stating that he had not sold any lots of hers, or any that she had any interest in, *and that she had lost sight of the deed given to him by William M. S. Hopkins and her in* 1860.

Now, the above statement is correct; but it should be stated that neither John S. Hopkins nor George W. Hopkins had any knowledge or notice whatever of the deed from William to Ingle for the benefit of William's wife *until the year* 1873, when Mrs. Hopkins wrote to John S. Hopkins informing him it had been executed, *and sending him the number where he would find it recorded on the Land Records.* (R. 379, 380.)

Of course, John S. Hopkins knew all about the history of the deed from William to him, made in 1860, and so soon as he was informed by Mrs. Hopkins of the existence of the deed to Ingle for her benefit, *he immediately wrote to Mrs. Hopkins, repudiating any claim she might set up under it.* It is evident John S. Hopkins never regarded the deed of 1860 other than as an *absolute conveyance*, even if he did pay over to William the share of his father's es-

tate, and even if he "availed" himself of the deed to protect William against his own improvidence.

On pages 14 and 15 of appellees' brief it is stated "that although these trustees bought this property in 1864, *yet in every instance when selling it prior to the death of their two brothers, Isaac H. Hopkins and George Washington Hopkins*, although the title was in them as individuals, *they sold and conveyed as executors and trustees*, the same as before their purchase, *and it was not until after the death of George Washington Hopkins, the last male in interest, that they asserted their title recorded six years before.*"

That part of the above statement in italics is absolutely untrue. The complainants put in evidence an abstract of all the conveyances from George W. and John S. Hopkins *as trustees*, and all conveyances from George W. and John S. Hopkins, or either of them, *as individuals*, from 1862 to the present time. (R. 340.) This abstract of conveyances is between pages 344–359 of the record. It appears by this abstract that *on the first day of August*, 1868, George W. Hopkins and wife conveyed to Owen Killride lot No. 20 in square 111. (R. 349.) *Now George Washington Hopkins died in July*, 1870. (Bill, par. 6, R. 2.) How completely this simple reference to the abstract exposes the misstatements in the appellees' brief! Besides, this abstract of conveyances *put in evidence by the complainants* shows that between the 29th of April, 1869, and the third of March, 1870, George W. Hopkins *as an individual*, by three separate conveyances made at different times to different purchasers, conveyed a number of lots in square 111, *and John S. Hopkins did not join therein*, and no mention is made in them of the executors or trustees of John Hopkins. They are simply conveyances of George W. Hopkins *as an individual*,

(R. 349–350.) All the deeds, more than fifty in number, made by George W. and John S. Hopkins, or either of them, either as trustees or as individuals, and which are set forth in said abstract of conveyances, were drawn by Mr. Callan, a notary public, or by his son, *and in his office.* (R. 598.) *Mr. Callan made a mistake in the form of three of these deeds on the list.* The way the mistake happened is fully explained under POINT XIII of our original brief at pages 157–164.

GEORGE F. EDMUNDS,
W. D. DAVIDGE,
Of Counsel for Appellants.

No. 94 – U.S.C.C.
Exhibit "B."
Filed Oct. 26/87.
(Sig.) J. B. Beattie,
Dy. clk.

NO. 137
N.O. Pac. Ry. Co. et al. } p. 28½.
v.
Parker et al.

(4-219)

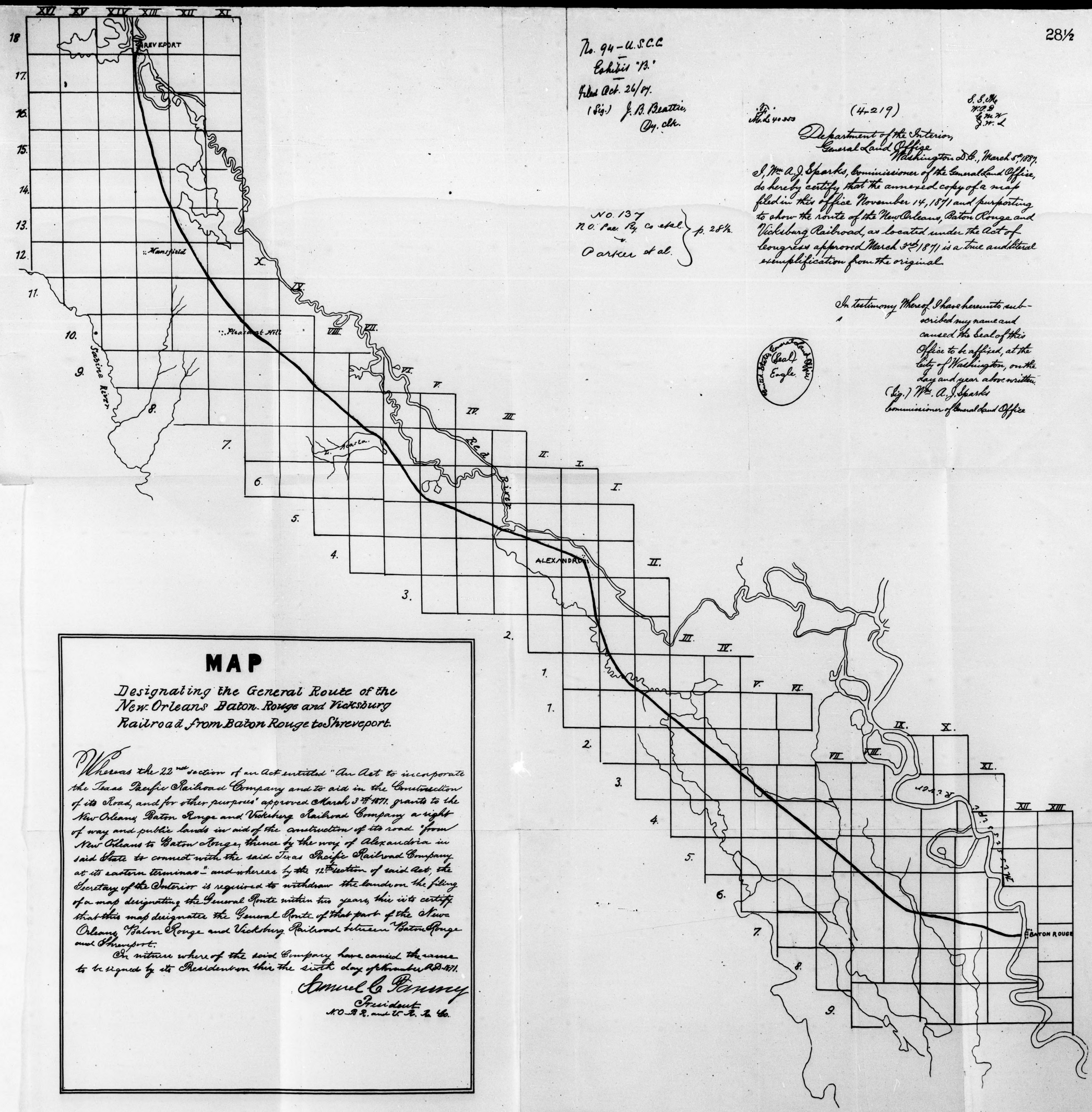
Department of the Interior,
General Land Office
Washington D.C., March 5th, 1887.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of a map filed in this office November 14, 1871 and purporting to show the route of the New Orleans, Baton Rouge and Vicksburg Railroad, as located under the Act of Congress approved March 3rd, 1871 is a true and literal exemplification from the original.

In testimony Whereof I have hereunto subscribed my name and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Sig.) Wm. A. J. Sparks
Commissioner of General Land Office

(Seal) Commissioner General Land Office Eagle.


SHREVEPORT
Mansfield
Pleasant Hill
Sabine River
Natchitoches
Red River
ALEXANDRIA
BATON ROUGE
XVI XV XIV XIII XII XI
18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1
X IX VIII VII VI V IV III II I
I II III IV V VI VII VIII IX X XI XII XIII

MAP

Designating the General Route of the New Orleans Baton Rouge and Vicksburg Railroad from Baton Rouge to Shreveport.

Whereas the 22nd section of an Act entitled "An Act to incorporate the Texas Pacific Railroad Company and to aid in the Construction of its Road, and for other purposes" approved March 3rd 1871. grants to the New Orleans Baton Rouge and Vicksburg Railroad Company a right of way and public lands in aid of the construction of its road "from New Orleans to Baton Rouge, thence by the way of Alexandria in said State to connect with the said Texas Pacific Railroad Company at its eastern terminus" and whereas by the 12th section of said Act, the Secretary of the Interior is required to withdraw the lands on the filing of a map designating the General Route within two years, this is to certify that this map designates the General Route of that part of the New Orleans Baton Rouge and Vicksburg Railroad between Baton Rouge and Shreveport.

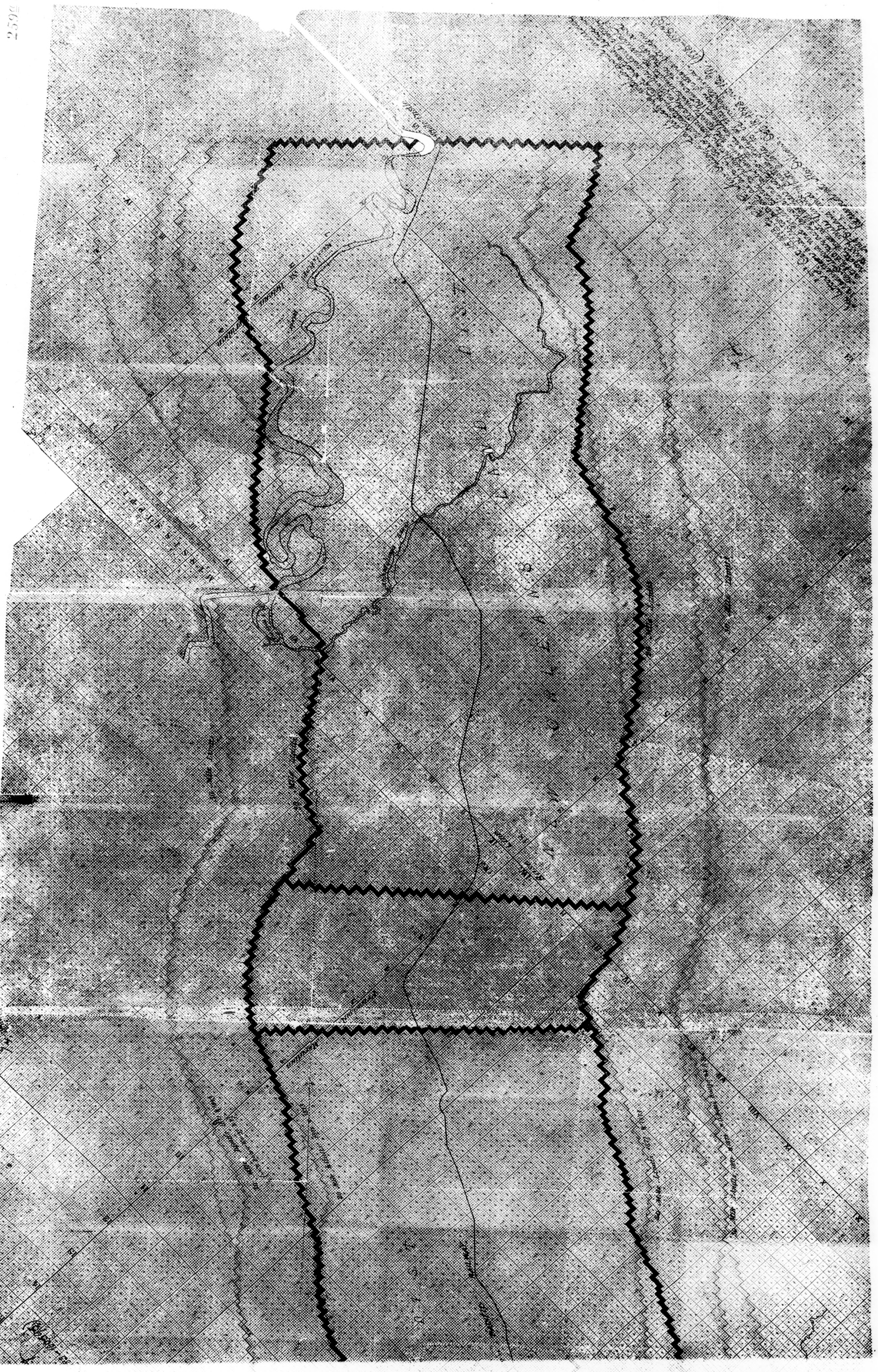
In witness where of the said Company have caused the same to be signed by its President on this the sixth day of November A.D. 1871.

Samuel C. Reid
President
N.O. P.R. and V.R.R. Co.

A T C H I S O N

L A N D

W E L L A N D



ARKANSAS

TEXAS

MISSISSIPPI

GULF OF MEXICO

Longitude West from Greenwich.

REFERENCES.

- Surveyor General's Office
- Land Office
- Townships Subdivided
- County Seats
- Cities. Towns
- Rail Road Limits
- Rail Roads Completed
- Boundary of Counties
- Townships Partly Subdivided
- Townships Missing
- Private Grants

Yellow Line New Orleans Pacific Railway as built.

Black lines - Jeanerette Lorsline of New Orleans & Baton Rouge & Vicksburg R.Rs.

No. 137.
N.O.P.Ry Co. etal. } p. 259 ½
vs
Parker et al.

Natchez
Vicksburg
Warrenton
Bruinsburg
Rodney
Big Bluff
Grand Gulf
Hard Times Landing
Eagle Bend
Providence
Delhi
Lake Providence
Monroe
Trinity
Harrisonburg
Natchitoches
Alexandria
Opelousas
Vermilionville
Lafayette
Washington
Lake Arthur
Lake Charles
Calcasieu
Sabine City
Leesburg
Cameron
New Columbia
Harrisonburg
Hamilton
Fort Jesup
Many
Mansfield
Grand Ecore
Minden
Homer
Shreveport
Greenwood
Mooringsport
Keachie
Logansport
Natchitoches
Coushatta
Fort Adams
Woodville
Clinton
Greensburg Dist.
Baton Rouge
Port Hudson
Lake Pontchartrain
New Orleans
Gainesville
Pearl River
Gaines Bluff
Pearl Town Bluff
Rollins
Bayou Lafourche
Thibodeaux
Franklin
Berwick Bay
Patterson
Morgan City
Terrebonne
Lafourche
Jefferson
St. Bernard
Plaquemines
Chandeleur Islands
Breton Islands
Calcasieu Pass
Sabine Pass
Sabine Lake
Calcasieu Lake
Mermentau River
Vermilion Bay
Atchafalaya Bay
Berwick Bay
Grand Lake
Black Lake
Natchez Bayou
Natchez Bluff
Red River
Mississippi River
Bayou Teche
Bayou Lafourche
Bayou Boeuf
Bayou Rapides
Bayou Cocodrie
Bayou Black
Bayou Sara
Bayou Manchac
Bayou Plaquemine
Bayou Grosse Tete
Bayou Des Allemands
Bayou Terrebonne
Bayou Lacombe
Bayou Chevreuil
Bayou Petit Anse
Bayou Vermilion
Bayou Mermentau
Bayou Nezpique
Bayou Queue de Tortue
Bayou Des Glaises
Bayou Courtableau
Bayou Carlin
Bayou Castor
Bayou Dauterive
Bayou Cocodrie
Bayou Rapides
Bayou Boeuf
Bayou Black
Bayou Sara
Bayou Manchac
Bayou Plaquemine
Bayou Grosse Tete
Bayou Des Allemands
Bayou Terrebonne
Bayou Lacombe
Bayou Chevreuil
Bayou Petit Anse
Bayou Vermilion
Bayou Mermentau
Bayou Nezpique
Bayou Queue de Tortue
Bayou Des Glaises
Bayou Courtableau
Bayou Carlin
Bayou Castor
Bayou Dauterive

83

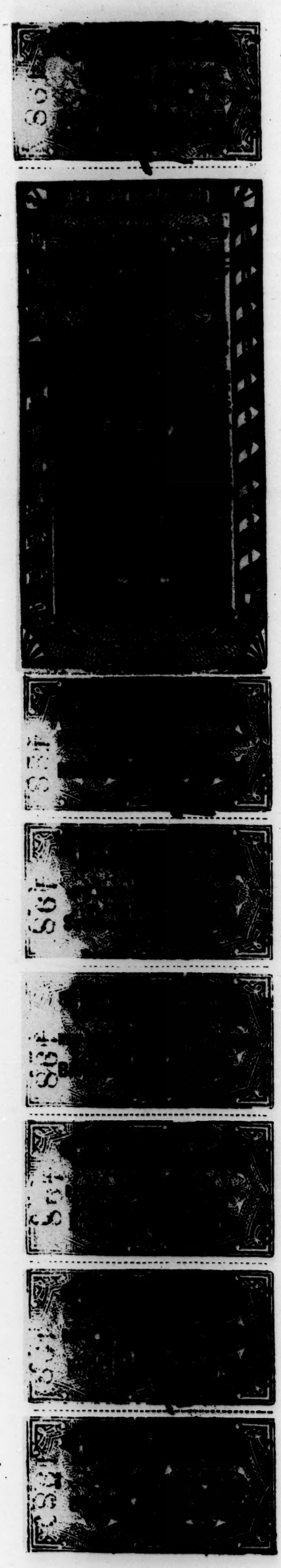
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
J. A. WILLIAMSON, COMMISSIONER

STATE OF LOUISIANA.

1879

Compiled from the official Records of the General Land Office and other sources by
C. ROESSER. Principal Draughtsman G.L.O.

S. EX. 21....., 1, 48.



N. Y. Lake Erie & Western RR Co.
vs.
David S. Winters
No. 169
p. 49a.

N. Y. Lake Erie & W. R.R. Co. vs. David S. Miller } No. 169 p. 70a.

N. Y., LAKE ERIE & WESTERN R. R.

STOP-OVER CHECK.

Book No. 3181 Check No.

NEW YORK, LAKE ERIE & WESTERN R. R.—Stop-Over Check.

In consideration of the Stop-Over privilege hereby granted by the New York, Lake Erie & Western R. R. Co., and accepted by the passenger, this Stop-Over Check is **Not Transferable**, and will be accepted for passage **only if presented by**.....(to whom it is issued by the Company) and if used within **Thirty Days from the Date** canceled in the margin hereof; **otherwise void.** The Company expressly reserves the right to take up and cancel this Check at any time if defaced or mutilated, or if presented for passage by any other person than the one whose name was originally written herein.

Good for passage from the place of destination, as punched,

To .....

Pat., Jan. 16, 1872; July 2, 1872; Sept. 10, 1872; Mar. 25, 26, 28, 1873.

Gen'l Ticket Agt.

Conductor.

EAST	WEST
New York	Geneseo
Jersey City	Mt. Morris
Passaic	Dansville
Newark	Caledonia
Paterson	Le Roy
Suffern	Batavia
Turners	Addison
Newburgh	Canisteo
Monroe	Hornellsville
Greycourt	Canaseraga
W's'h'nville	Dalton
Warwick	Portage
Goshen	Castile
Montg'm'ry	Gainesville
Middletown	Warsaw
Otisville	Attica
Port Jervis	Alden
Lackawaxen	Buffalo
Hawley	Lockport
Honesdale	Tonawanda
Narrowsb'rg	Niagara F'lls
Callicoon	Susp. Bridge
Hancock	Alfred
Deposit	Wellsville
Susquehanna	Belmont
Carbondale	Belvidere
Gt. Bend	Friendship
Binghamton	Cuba
Union	Olean
Campville	Allegany
Owego	Carrollton
Waverly	Bradford
Elmira	Gilesville
Corning	Salamanca
Campbells	Little Valley
Bath	Cattaraugus
Avoca	Dayton
Bloods	Perrysburg
Wayland	Dunkirk
Springwater	Half Ticket.
Livonia	
Avon	
Rochester	

1883	1884	1885	1886	Dec.	Nov.	Oct.	Sep.	Aug.	July	June	May	Apr.	Mar.	Feb.	Jan.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

Book No. 3181 Check No.

NEW YORK, LAKE ERIE & WESTERN R. R.

NOT GOOD FOR PASSAGE.

This half of STOP-OVER CHECK is of NO VALUE except to the Conductor, who must return it promptly to the Auditor, pinning it to the ticket collected from passenger.

JOHN N. ABBOTT, Gen'l Ticket Agent.

EAST	WEST
New York	Geneseo
Jersey City	Mt. Morris
Passaic	Dansville
Newark	Caledonia
Paterson	Le Roy
Suffern	Batavia
Turners	Addison
Newburgh	Canisteo
Monroe	Hornellsville
Greycourt	Canaseraga
W's'h'nville	Dalton
Warwick	Portage
Goshen	Castile
Montg'm'ry	Gainesville
Middletown	Warsaw
Otisville	Attica
Port Jervis	Alden
Lackawaxen	Buffalo
Hawley	Lockport
Honesdale	Tonawanda
Narrowsb'rg	Niagara F'lls
Callicoon	Susp. Bridge
Hancock	Alfred
Deposit	Wellsville
Susquehanna	Belmont
Carbondale	Belvidere
Gt. Bend	Friendship
Binghamton	Cuba
Union	Olean
Campville	Allegany
Owego	Carrollton
Waverly	Bradford
Elmira	Gilesville
Corning	Salamanca
Campbells	Little Valley
Bath	Cattaraugus
Avoca	Dayton
Bloods	Perrysburg
Wayland	Dunkirk
Springwater	Half Ticket.
Livonia	
Avon	
Rochester	

1883	1884	1885	1886	Dec.	Nov.	Oct.	Sep.	Aug.	July	June	May	Apr.	Mar.	Feb.	Jan.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

70a

ISSUED BY

FITCHBURG R. R.
COMPANY.

FIRST CLASS.

BOSTON
TO

CHICAGO, Ill.

Via F BHT&W D&HCCo NYL&W NYP&O and PFtW&C

511

Form A 300

SAMPLE

31	30	29	28	27	26	25	24	23	22	21
1882										20
1883										19
1884										18
1885										17
1886										16
1887										15
1888										14
MONTH.										DAY.
Jan.										13
Feb.										12
Mar.										11
Apr.										10
May.										9
Jun.										8
Jul.										7
Aug.										6
Sep.										5
Oct.										4
Nov.										3
Dec.										2
										1

ISSUED BY

Fitchburg Railroad Company.

☞ Agents will in no case extend the time on this ticket; if more than one date be cancelled it will not be received for passage by Conductors.

Good for one

FIRST CLASS PASSAGE

TO

Point Named in Check Attached,

When Stamped by the Company's Agent subject to the following Contract.

In selling this ticket for passage over other lines, this Company acts only as Agent, and assumes no responsibility beyond its own line, which extends from Boston to Greenfield only.

No stop-over will be allowed hereon unless specially provided for by the local regulations of the lines over which it reads.

It is not good for passage if any alterations whatever are made hereon.

If this Contract and its Coupon bear no "L" punch cancellations, the passenger is entitled to all the privileges accorded to holders of unlimited tickets of like class.

If this Contract and its Coupons are cancelled with the "L" punch, it indicates that this ticket has been sold at a reduced rate, and that it is not transferable, and must be used on or before the expiration of date as cancelled on the margin hereof. If not so used, or if more than one date is cancelled it is void.

None of the companies represented in this Ticket will assume any liability on baggage, except for wearing apparel, and then only for a sum not exceeding $100.

☞ The Coupons belonging to this Ticket will not be received for passage if detached from the Contract.

.....
General Ticket Agent.

In consideration of the reduced rate at which this ticket is sold I agree to the above contract.

.....
Signature

.....
Witness

SAMPLE

ISSUED BY

FITCHBURG R. R.
COMPANY.

On account of

PITTSBURG, FT. WAYNE & CHIC. R'Y

One First Class Passage,

MANSFIELD to CHICAGO.

Not good if detached.

Boston to Chicago, Ill.

511

Form A 300

SAMPLE

ISSUED BY

FITCHBURG R. R.
COMPANY.

On account of

NEW YORK, PENN. & OHIO R. R.

One First Class Passage,

Salamanca to Mansfield.

Not good if detached.

Boston to Chicago, Ill.

511

Form A 300

SAMPLE

ISSUED BY

FITCHBURG R. R.
COMPANY.

On account of

NEW YORK, LAKE ERIE & WEST. R. R.

One First Class Passage,

Binghamton to Salamanca.

Not good if detached.

Boston to Chicago, Ill.

511

Form A 300

SAMPLE

ISSUED BY

FITCHBURG R. R.
COMPANY.

On account of

DELAWARE & HUDSON CANAL CO.

One First Class Passage,

Mechanicville to Binghamton.

Not good if detached.

Boston to Chicago, Ill.

511

Form A 300

SAMPLE

ISSUED BY

FITCHBURG R. R.
COMPANY.

On account of

BOST. HOOSAC TUN. & WEST. R'Y.

One First Class Passage,

North Adams to Mechanicville.

Not good if detached.

Boston to Chicago, Ill.

511

Form A 300

SAMPLE

ISSUED BY

FITCHBURG R. R.
COMPANY.

One First Class Passage,

BOSTON to NO. ADAMS.

Not good if detached.

Boston to Chicago, Ill.

511

Form A 300

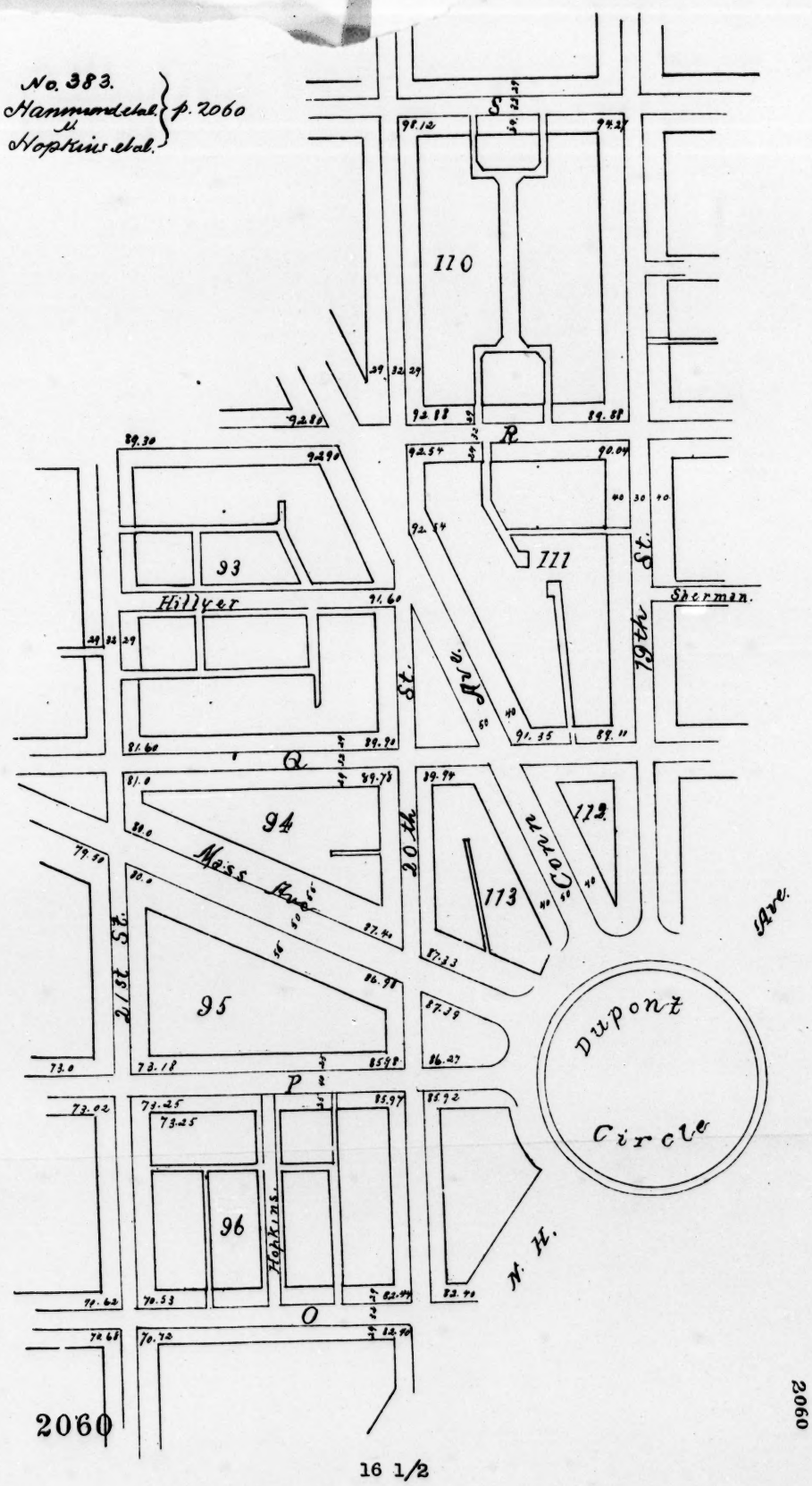
NEBRASKA.

ABSTRACT OF VOTES CAST AT THE GENERAL ELECTION HELD IN THE STATE OF NEBRASKA ON THE FOURTH DAY OF NOVEMBER, A. D. 1890, FOR GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, AUDITOR OF PUBLIC ACCOUNTS, TREASURER, ATTORNEY GENERAL, COMMISSIONER PUBLIC LANDS AND BUILDINGS, SUPERINTENDENT PUBLIC INSTRUCTION, CONGRESSMEN, "FOR" AND "AGAINST" THE AMENDMENTS TO THE CONSTITUTION.

Counties.	Governor.					Lieutenant Governor.				Secretary of State.				Auditor Public Accounts.				Treasurer.				Attorney General.				Com. Public Lands and Buildings.				Superintendent Public Instruction.				Congressman, First District.				Congressman, Second District.				Congressman, Third District.				The Amendments.				
	L. D. Richards, rep.	J. E. Boyd, dem.	J. H. Powers, ind.	B. L. Paine, prohib.	Scattering.	J. T. Majors, rep.	Alex. Bear, dem.	W. H. Dech, ind.	G.W.Woodbey, prohib.	Scattering.	John C. Allen, rep.	F. W. Sprague, dem.	C. N. Meyberry, ind.	Chas. Watts, prohib.	Scattering.	T. H. Benton, rep.	R. B. Wahlquist, dem.	John Bate, ind.	A. Fisch, Jr., prohib.	Scattering.	J. E. Hill, rep.	W. H. Cushing, dem.	J. V. Wolfe, ind.	H. W. Hardy, prohib.	Scattering.	G. H. Hastings, rep.	J. H. Higgins, dem.	J. W. Edgerton, ind.	C. Olson, prohib.	Scattering.	A. R. Humphrey, rep.	Jacob Bigler, dem.	W. F. Wright, ind.	Mrs. M. R. Morgan, prohib.	Scattering.	W. J. Connell, rep.	W. J. Bryan, dem.	Allen Root, ind.	E. H. Chapin, prohib.	Scattering.	N. V. Harlan, rep.	W. A. McKeighan, ind. and dem.	L. B. Palmer, prohib.	Scattering.	G. W. E. Dorsey, rep.	W. H. Thompson, dem.	C. M. Kem, ind.	W. L. Pierce, prohib.	Scattering.	For prohibition.	Against prohibition.	For license.	Against license.	For judges.	Against judges.	For salary.	Against salary.	Total vote.
Adams	1331	861	1527	65	---	1438	777	1470	104	1	1453	766	1473	90	3	1383	883	1432	87	2	1440	777	1474	90	2	1461	762	1474	90	---	1415	819	1411	90	47	1427	802	1411	89	3	---	---	---	---	---	1464	2206	79	1	---	---	---	---	---	1708	1777	622	1821	1100	919	1099	922	3790
Antelope	680	245	1229	20	---	693	193	1253	29	---	684	196	1258	30	---	656	203	1278	33	---	705	190	1253	33	---	688	195	1263	29	---	691	195	1247	31	---	692	195	1253	31	---	---	---	---	---

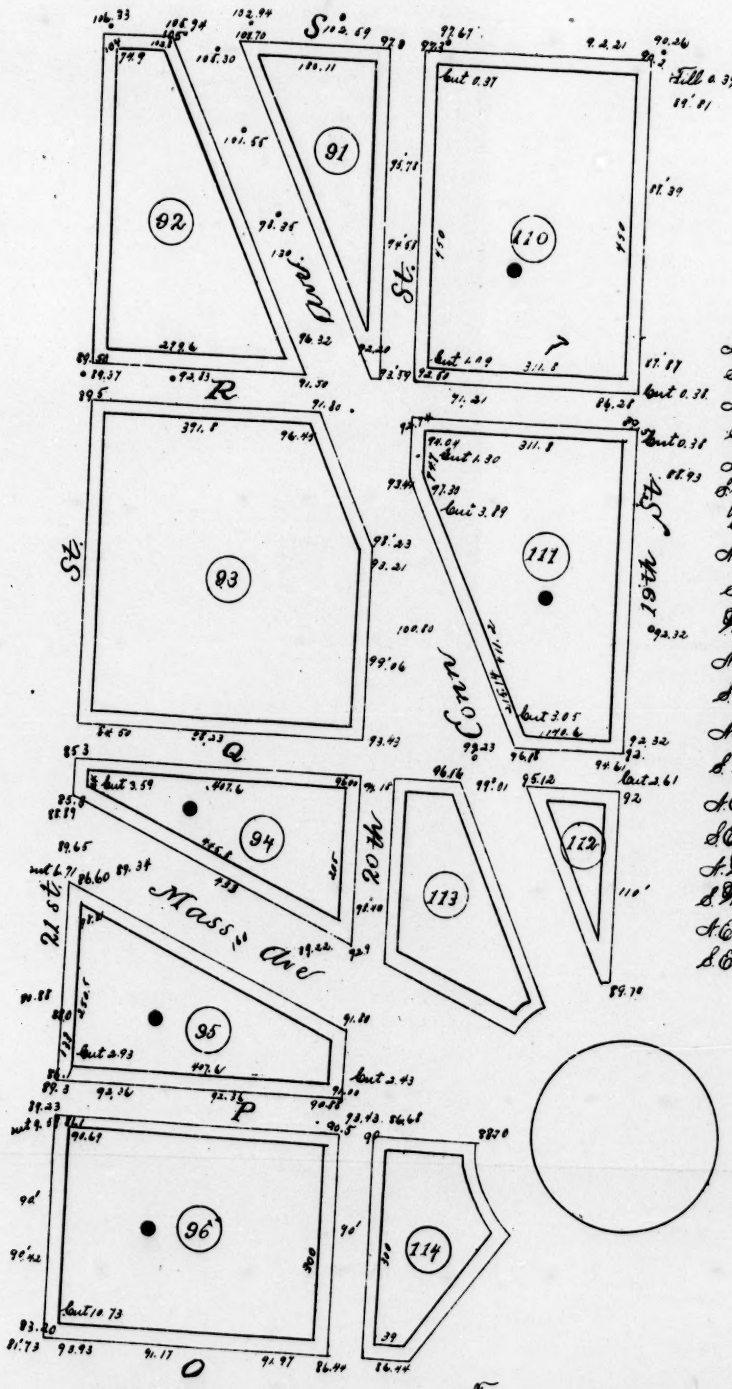
No. 383.
Hammond et al. } p. 2060
u
Hopkins et al.

8.



16 1/2

2060



S.W. Cor Sq	110	Court	0.37
S.W. " "	"	"	1.09
N.E. " "	"	Fill	0.39
S.E. " "	"	Court	0.38
N.W. " "	111	"	1.30
S of S.W. Cor.	"	"	3.89
S.W. " Sq	"	"	3.05
N.E. " "	"	"	0.38
S.E. " "	"	"	2.61
W. end	94	"	3.59
N.E. Cor Sq.			
S.E. " "			
N.W. " "	95	"	6.71
S.W. " "	"	"	2.93
N.E. " "	"		
S.E. " "	"		
N.W. " "	96	"	2.43
S.W. " "	"	"	9.59
N.E. " "	"	"	10.73
S.E. " "	"		

No. 383.
Nammo et al.
v.
Napkins et al
} p. 2079

2079

True copy of grades and levels Squares 94 95 96 110 & 111, as taken from Book of Grades Approved Aug. 4th 1859, by the Board of Aldermen, Board of Common Council & Mayor of Washington, D.C.
For Mess. Phillips Johnson
March 13, 1886

(Signed) Wm. Tom Smith
Surveyor of Dist. Col.

34 1/2

2079

Exhibit. R. S. B. No. 13.
of Complainants testimony.

No 383.
Hammond et al
v.
Hopkins et al
} p. 2545

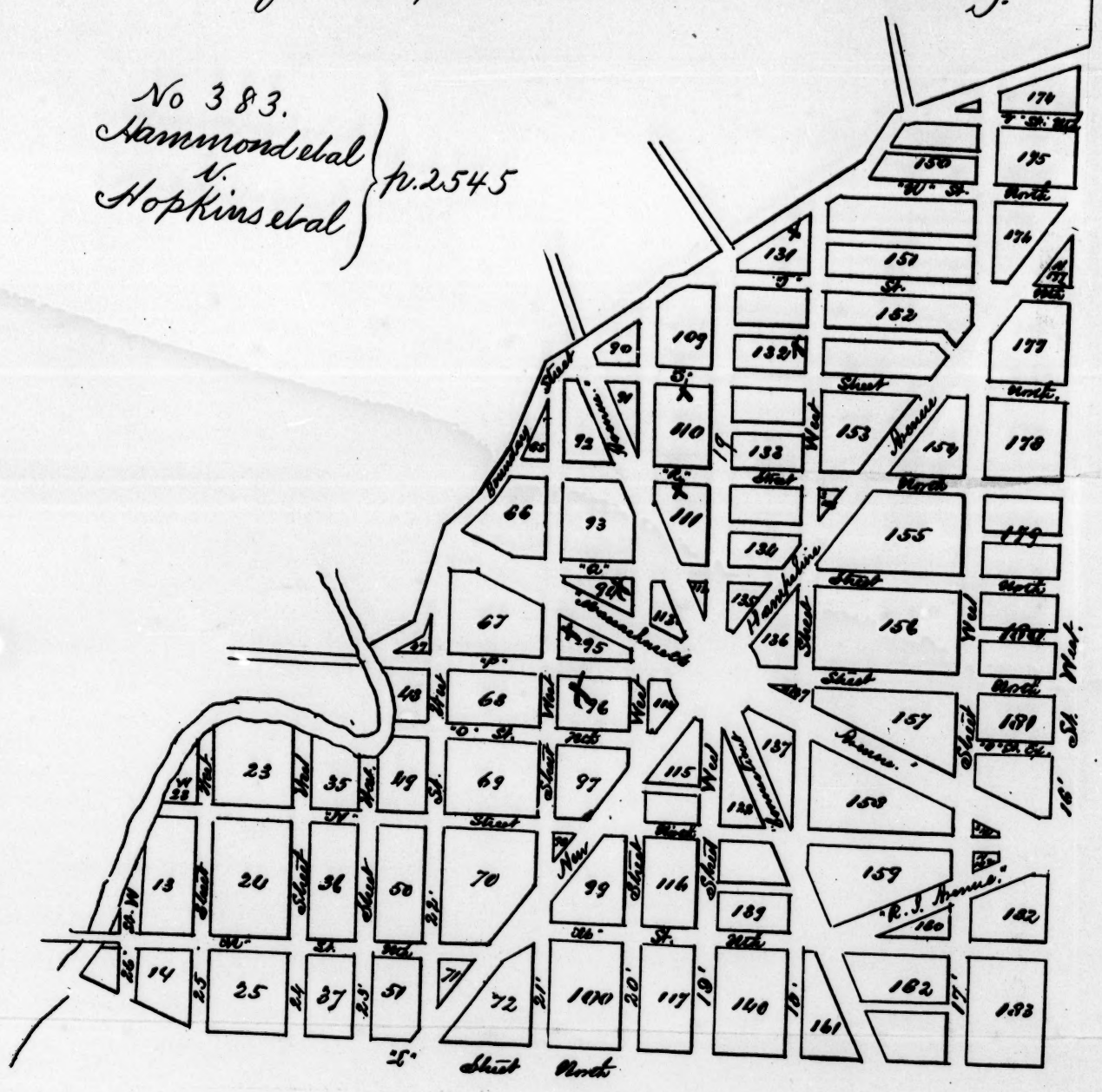
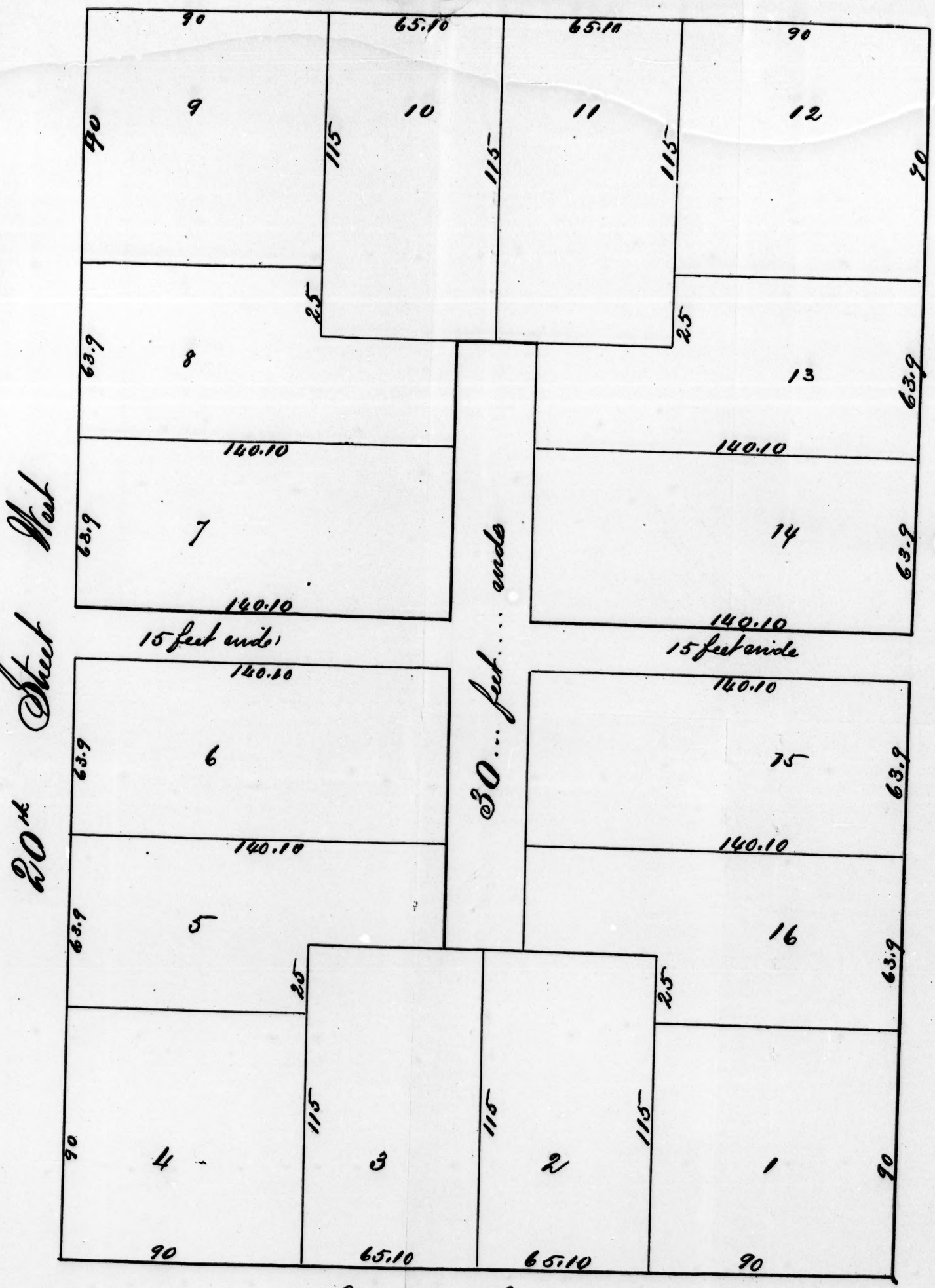


Exhibit R. S. B. No. 14
Complainants testimony.

North "B" Street



North "D" Street

No. 383.
Hammond et al.
v.
Hopkins et al.
} p. 2546.

Surveyor's Office, District of Columbia.
Washington Sept. 16th 1884.

I hereby certify, that the above plat is a true copy of the plat of Square 110, as recorded in this office.

Exhibit R. S. B. No. 14

Surveyor, District of Columbia.

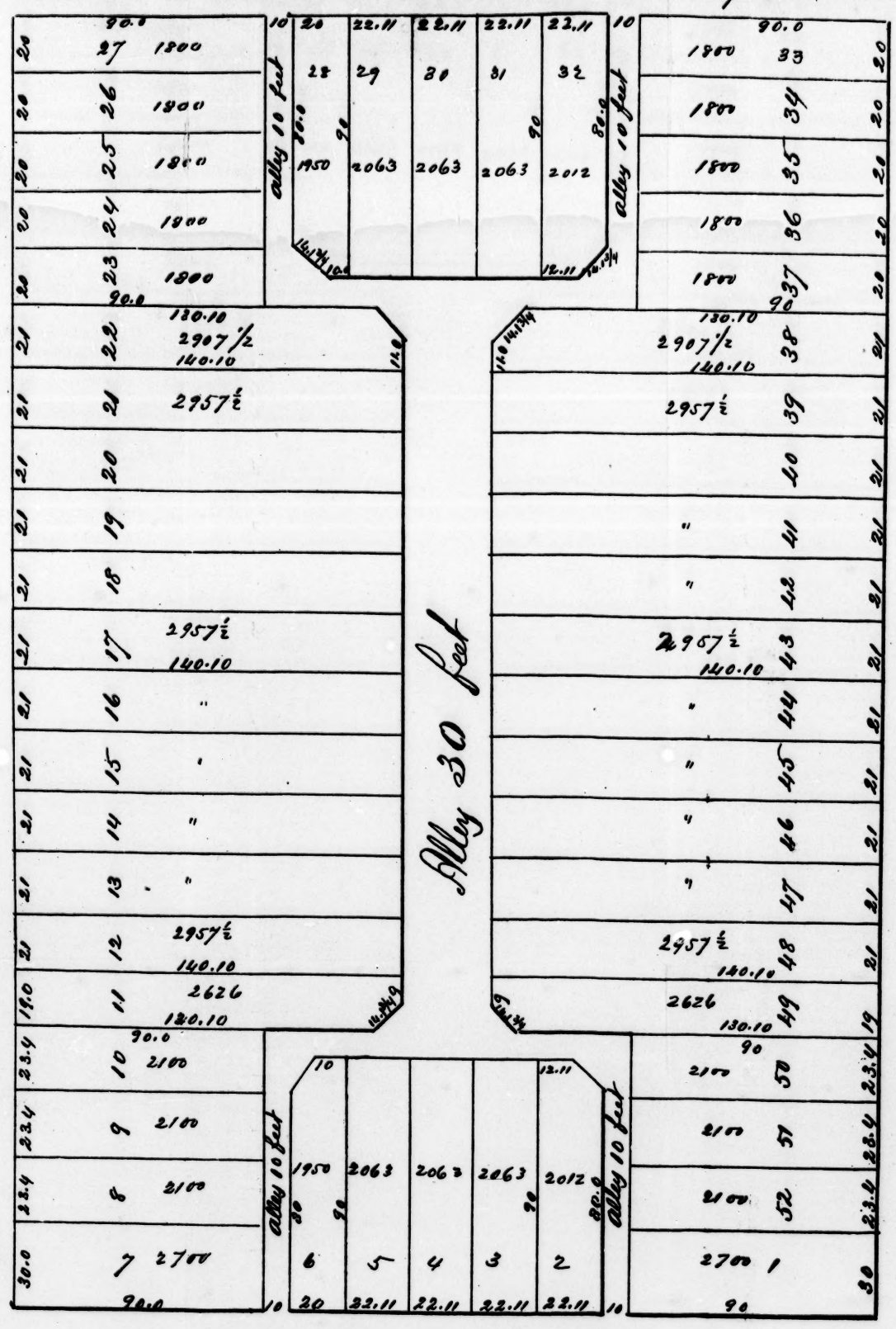
2546

164

Subdivision Square 110
North S Street

Exhibit R. S. B.
No. 15
Complainants testimony

No. 383.
Hammond et al
v.
Hopkins et al.
p. 2547



Surveyor Office, Dist. Col.
Washington Sept. 16 1859
Survey of Square of subdivision of Square 110. Recorded in Liber "R" folio 134
Wm Freyer
Surveyor, Dist. Col.

North S Street

J. & G. W. Hopkins Subdivision Square 110

Washington Sept 16th 1859.

I George W Hopkins on my own part and executor of John Hopkins deceased, hereby certify that I have subdivided all of Square Number 110, of which we were joint proprietors into lots numbered from 1 to 52 inclusive with the alleys as designated on the adjoining plat Witness my hand and seal the date and year above written

Witness
(Signed) Wm J. Donohoo
(Signed) N. A. Offenning

(Signed) G W Hopkins for self & as Exr of John (seal)
(Signed) J. S. Hopkins (seal)

Witness for J. S. Hopkins
(signed) Wm Freyer
(signed) Jas. E Rawlings

for

Surveyors Office Sept 16 1859

I do hereby certify that I have examined the plat of the subdivision of Square Number One Hundred and ten and find the same to correspond with the original recorded in this office. Given under my hand and the seal of this office this 16th day of September A. D. 1859

Exhibit R. S. B. No. 15 (Signed) Wm Freyer (seal)
Surveyor of the City of Washington

167 and 1.

2547

2584

North "Q" Sheet

Exhibit U. S. B'k'r. 16.
of Complainants testimony.

No. 383.
Hammond et al.
v.
Hopkins et al.
} p. 2584.

Surveyor's Office, District of Columbia
Washington, Sept. 16 1884

I hereby certify that the above plat is a true copy of plat of Square 94 as on record in this office

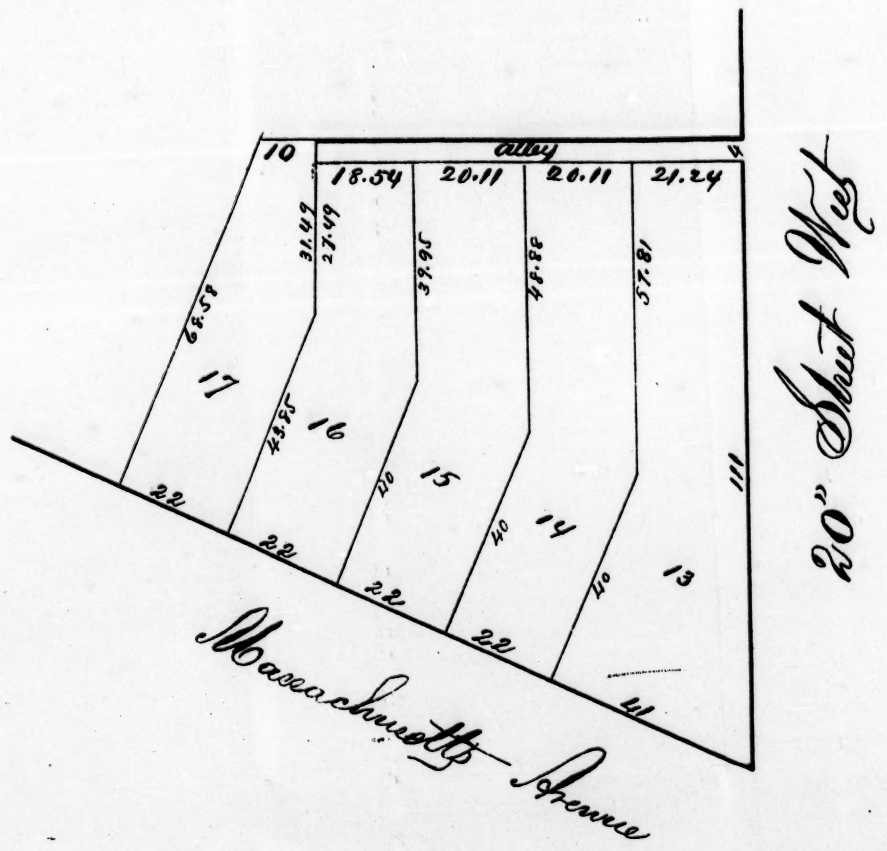
Surveyor, Dist. Columbia.

Exhibit R. S. B'k'r. 16.

Exhibit R. S. B. No. 17
of Complainants testimony

94

No 383
Hammond et al
v.
Hopkins et al
} p. 2549



Washington, D.C., February 14, 1880

This is to certify, that we have subdivided lots 7.8.9.10.11.12, and four feet alley, of our subdivision (see Liber "J.H.H." folio 371) in Square 94, into lots 13.14.15.16.17 and four feet alley for the exclusive use and benefit of this subdivision.

Witness
F.H. Partridge
Patrick O'Callaghan as to 1
Ira H. Hopkins
Joseph Allen as to 2.3.4.5.
Jas A Partridge as to 5

1 (Signed) Ira H. Hopkins seal
2 (Signed) G.N. Hopkins seal
3 (Signed) Elizabeth B Luttrell seal
4 (Signed) Mary E. Hopkins seal
5 (Signed) Cornelius Hopkins seal

Surveyor's Office of the Dist. Col, Washington D.C.

This is to certify, that I have examined the above plat of subdivision of lots 7 to 12 (inc) and four feet alley (of subdivision in Liber "J.H.H." folio 371) in Square 94, and find the same correct and to correspond with the records of this. Given under my hand and the seal of my office, this 14th day of Feby, A.D. 1880.

(Signed) Jas A Partridge seal
Surv, Dist. Col.

Surveyor's Office, D.C. Washington Sept. 16, 1884

I hereby certify, that the above is a true copy of subdivision in Square 94, as recorded in Book 10, page 109.

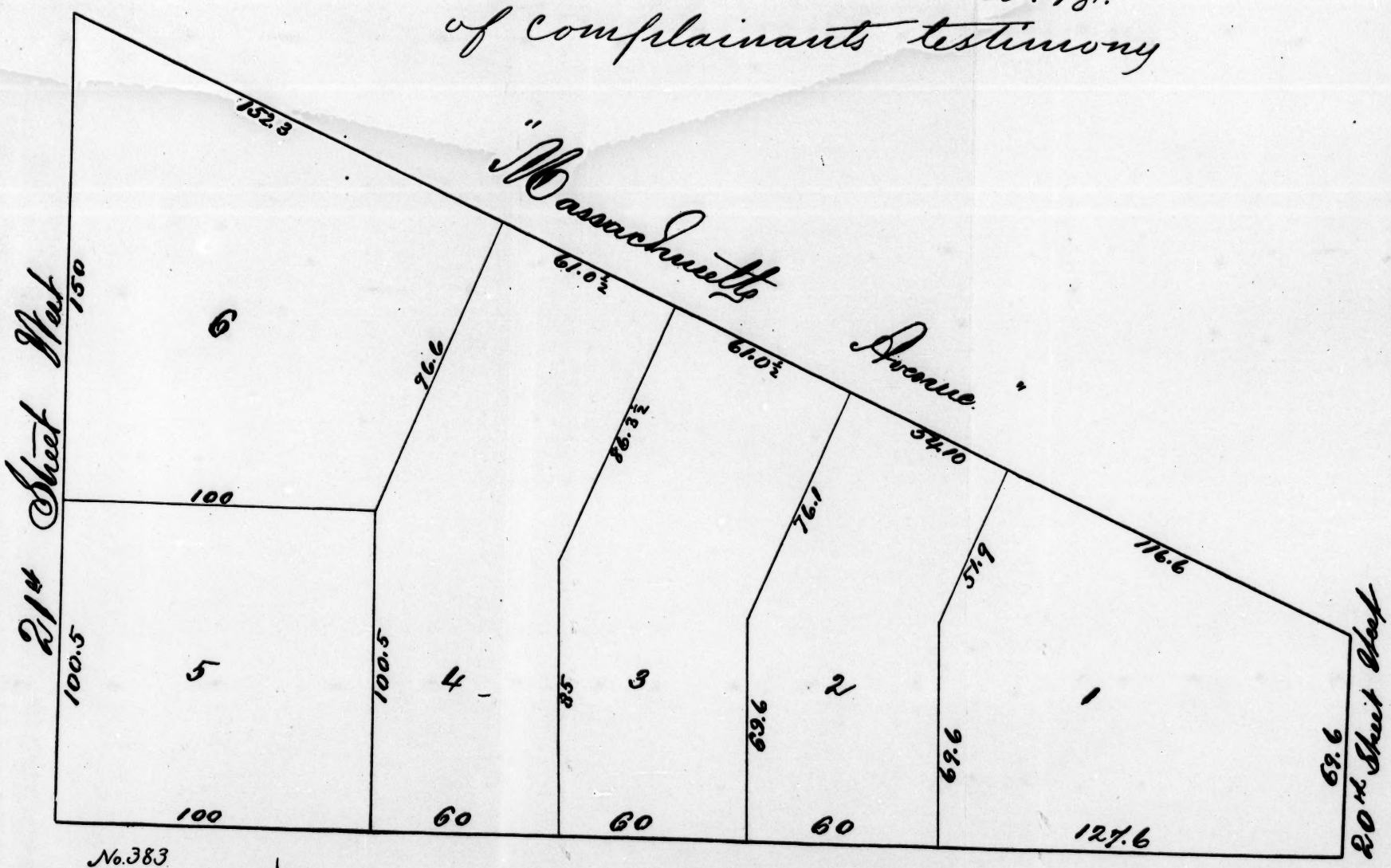
Exhibit R.S.B. No. 17

Surveyor, Dist. Columbia.

167 f.

2549

Exhibit R. S. B. No. 18.
of complainants testimony



No. 383
Hammond et al.
v.
Hopkins et al.
} p. 2550.

Surveyor's Office, District of Columbia.
Washington, Sept. 16' 1884.

I hereby certify that the above plat is a true copy of plat of Square 95, as is recorded in this office.

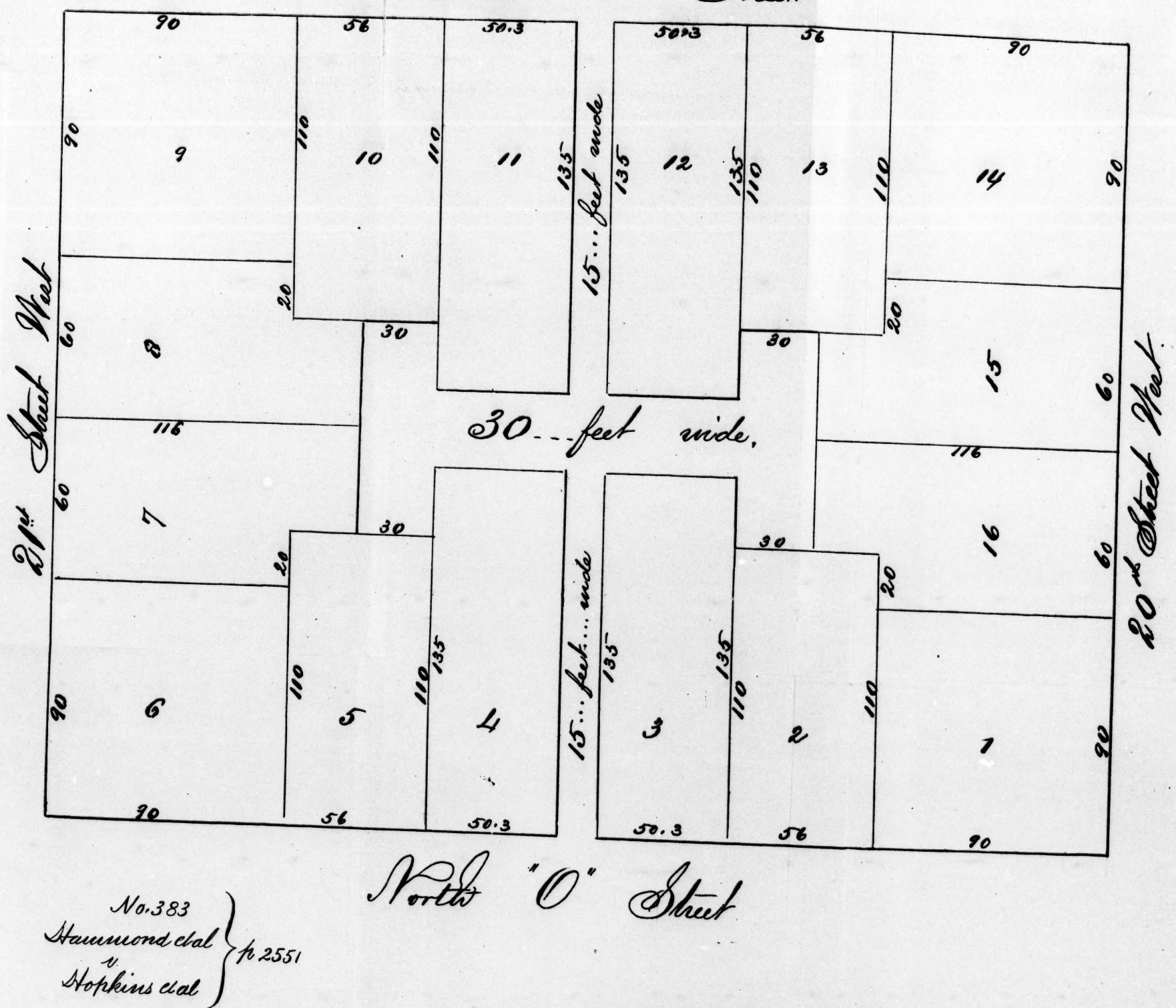
Surveyor's District of Columbia.

Exhibit R. S. B. No. 18.

1679

2550

Exhibit R. S. B. No. 19
of complainants testimony



No. 383
Hammond et al
v
Hopkins et al
} p 2551

Surveyor's Office, District of Columbia.
Washington, Sept. 16th 1884.

I hereby certify, that the above plat is a true copy of the plat of Square 96, as recorded in this office.

Exhibit R. S. B. No. 19 Surveyor, District of Columbia.

167h

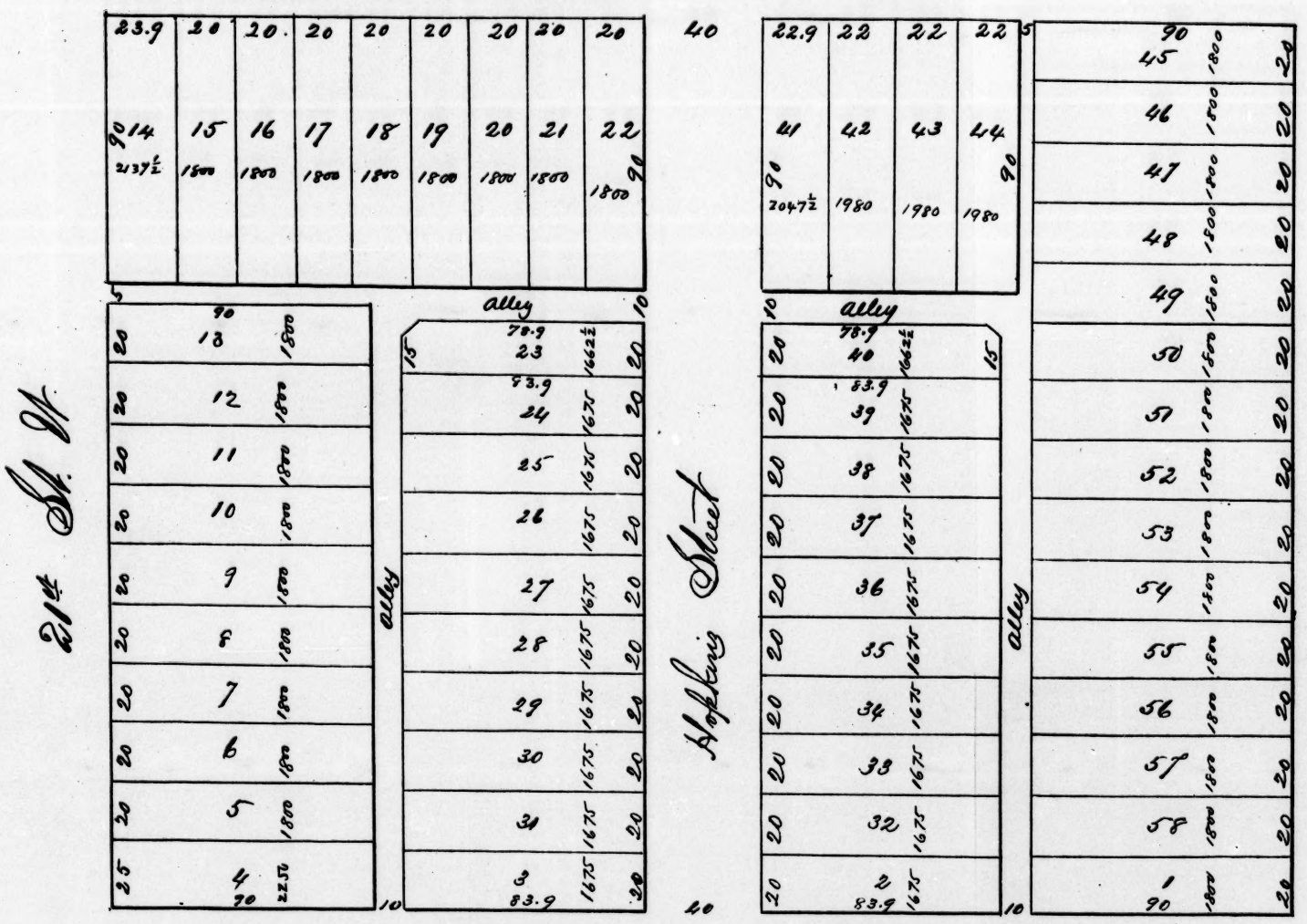
2551

Exhibit R. S. B. No. 20. of Complainants testimony.

96

No. 383.
Hammond Etal.
vs.
Hopkins etal.
} p. 2552

North P Street



North O Street

Washington. D.C; Oct. 20th 1877.

This is to certify that we have subdivided Square 96, into lots 1 to 58 as laid down in the above plat; with alleys 5 and 10 feet wide respectively, and "Hopkins Street" 40 feet wide.

(Signed) J.S. Hopkins seal
(Signed) Dr G.W. Hopkins seal
(Signed) Lizzie B Luttrell (née Hopkins seal
(Signed) Ira W. Hopkins seal
(Signed) Cornelius Hopkins seal
(Signed) Mary E. Hopkins seal
(Signed) L. Freddie Hopkins seal

Witness — [G.W. Hopkins (signed), G.W. Hopkins (signed), Joseph Allen (signed)] — as to the first six signatures

[Ophelia C Munder (signed), Joseph Allen (signed)] — as to ------

Surveyor's Office of the Dist. Columbia. Washington, D.C. Oct. 20. 1877.

I do hereby certify, that I have examined the above plat of subdivision of Square 96, and find the same correct and to correspond with the records of this office.

Given, under my hand and the seal of my office, this 20th day of October, A. D. 1877

(Signed) Jas A Pairbridge seal
Surveyor of the Dist. Columbia

Surveyor's Office Dist. Col. Washington Sept. 16th 1884.

I do hereby certify, that the above is a true copy of the record of subdivision of Square 96, as recorded in Liber "J.H.K." fol. 213

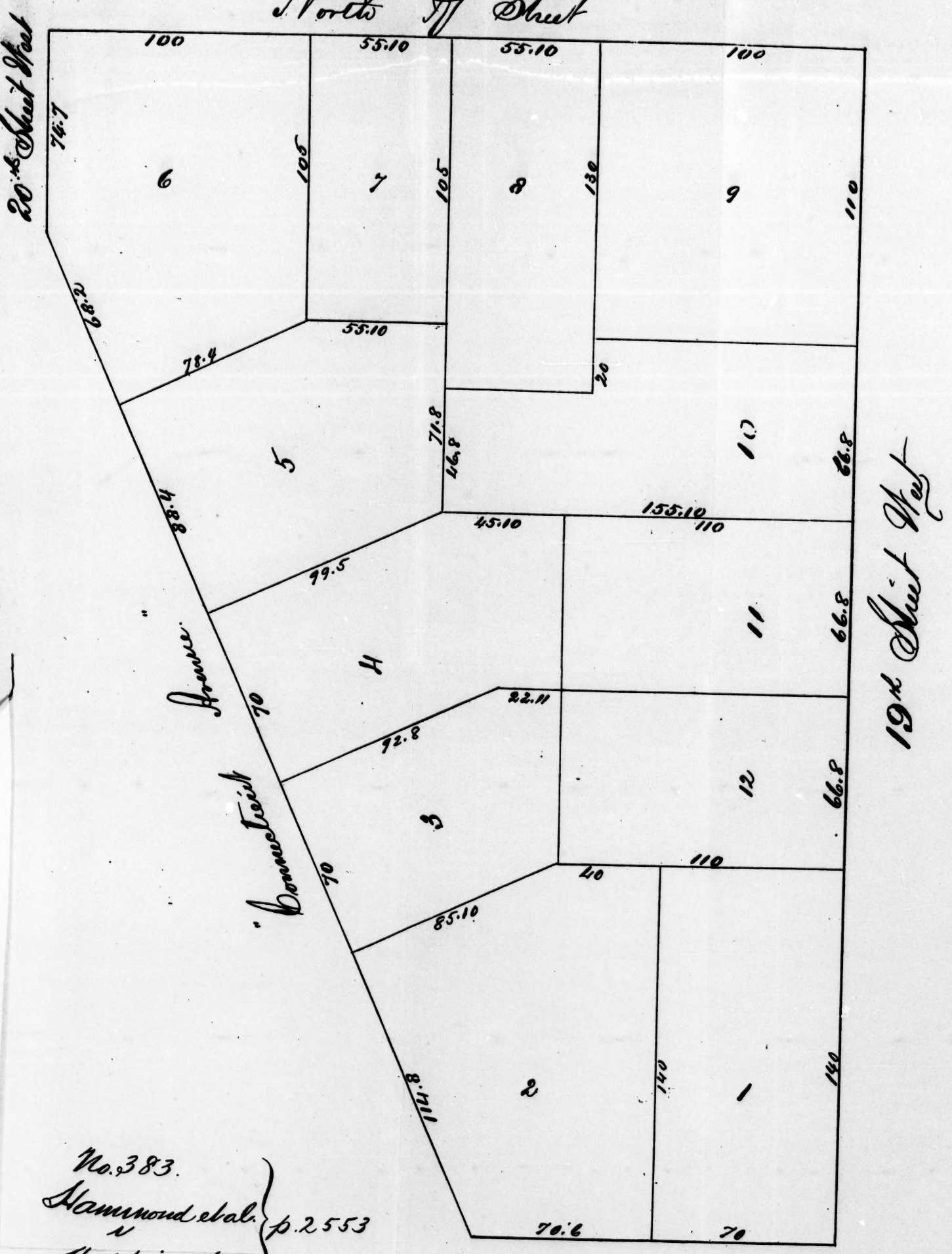
Exhibit R. S. B. No. 20.

Surveyor. District of Columbia.

167i.

2552

Exhibit R. S. B. No. 21
of complainants' testimony



No. 383.
Hammond et al.
v
Hopkins et al.
} p. 2553

Surveyor Office. Dist. Columbia.
Washington, Sept. 16' 1884

I hereby certify, that the above plat is a true copy of plat of Square 111 as recorded in this office

Exhibit R. S. B. No. 21.

16 of 7

Surveyor, Dist. Columbia

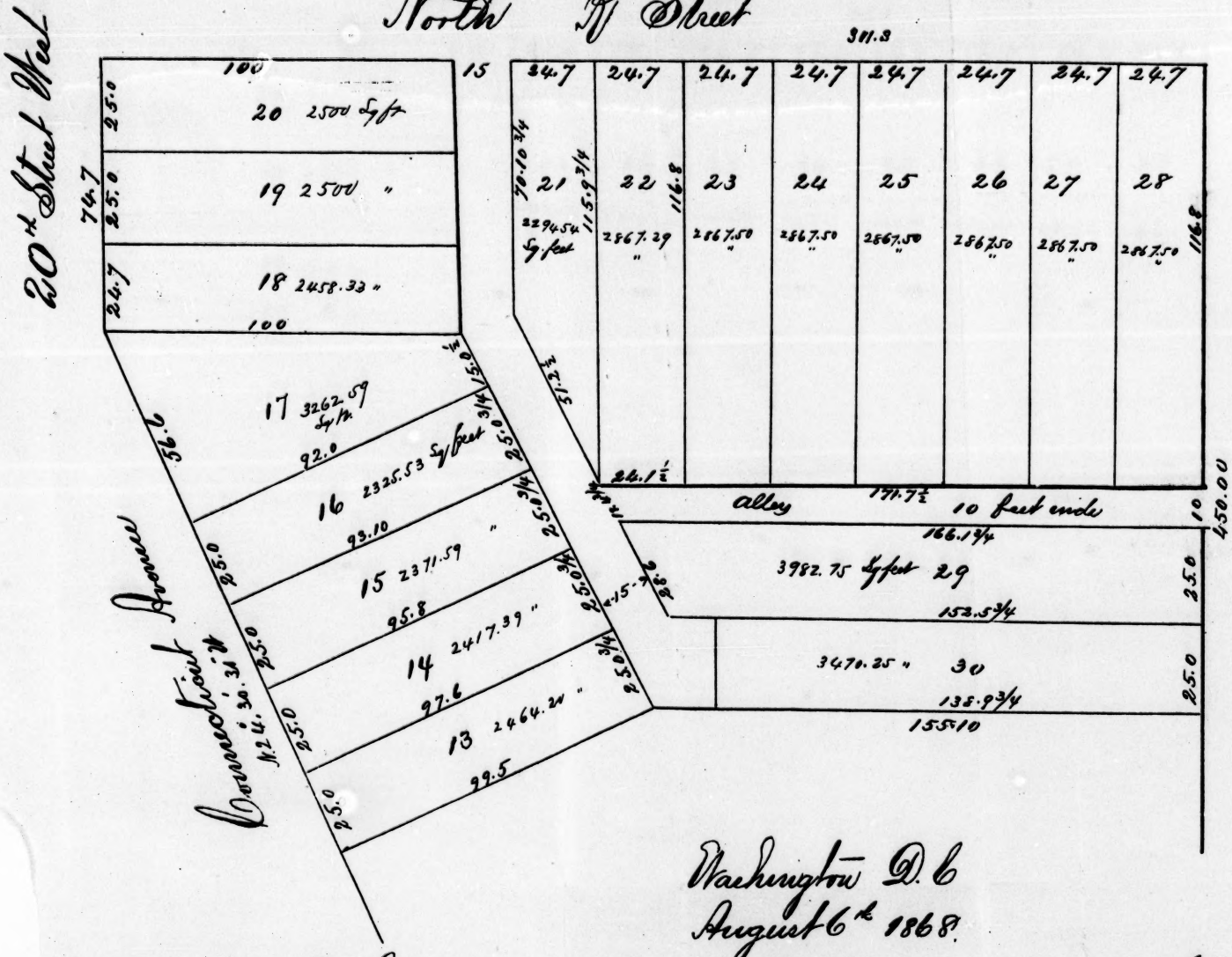
2553

Exhibit R. S. B. No. 22
of Complainants' testimony

G. W. Hopkins Sub. Div. aug 6. 1868

Square 111
Lots 5.6.7.8.9 & 10

North R Street



Washington D. C
August 6th 1868.

This is to certify that I have Subdivided Lots No 5.6.7.8.9 & 10 in Square No One Hundred & Eleven (111) of which I am the Proprietor into the Lots Nos 13 to 30 inclusive with alley 10 & 15 feet wide as laid down on the above plat.

Witness { W. W. De Mann (signed) A. McPhaem (signed) } (Signed) Geo. W. Hopkins Seal

Surveyors Office
Aug 6th 1868

I do hereby certify that I have examined the above plat of Subdivision of Lots No 5 to 10 inclusive in Square number One Hundred & Eleven (111) and find the same correct according to the records in my office

Given under my hand and the seal of my office this 6 day of August 1868.

(Signed) Chas. N. Flint Seal
Surveyor D. C.

No. 383.
Hammond et al.
v.
Hopkins et al. } p. 2554

Surveyors Office. District of Columbia.
Washington September 16th 1884

I hereby certify, that the foregoing is a true copy of the record of subdivision in Square 111, as recorded in Liber D. H. folio 114

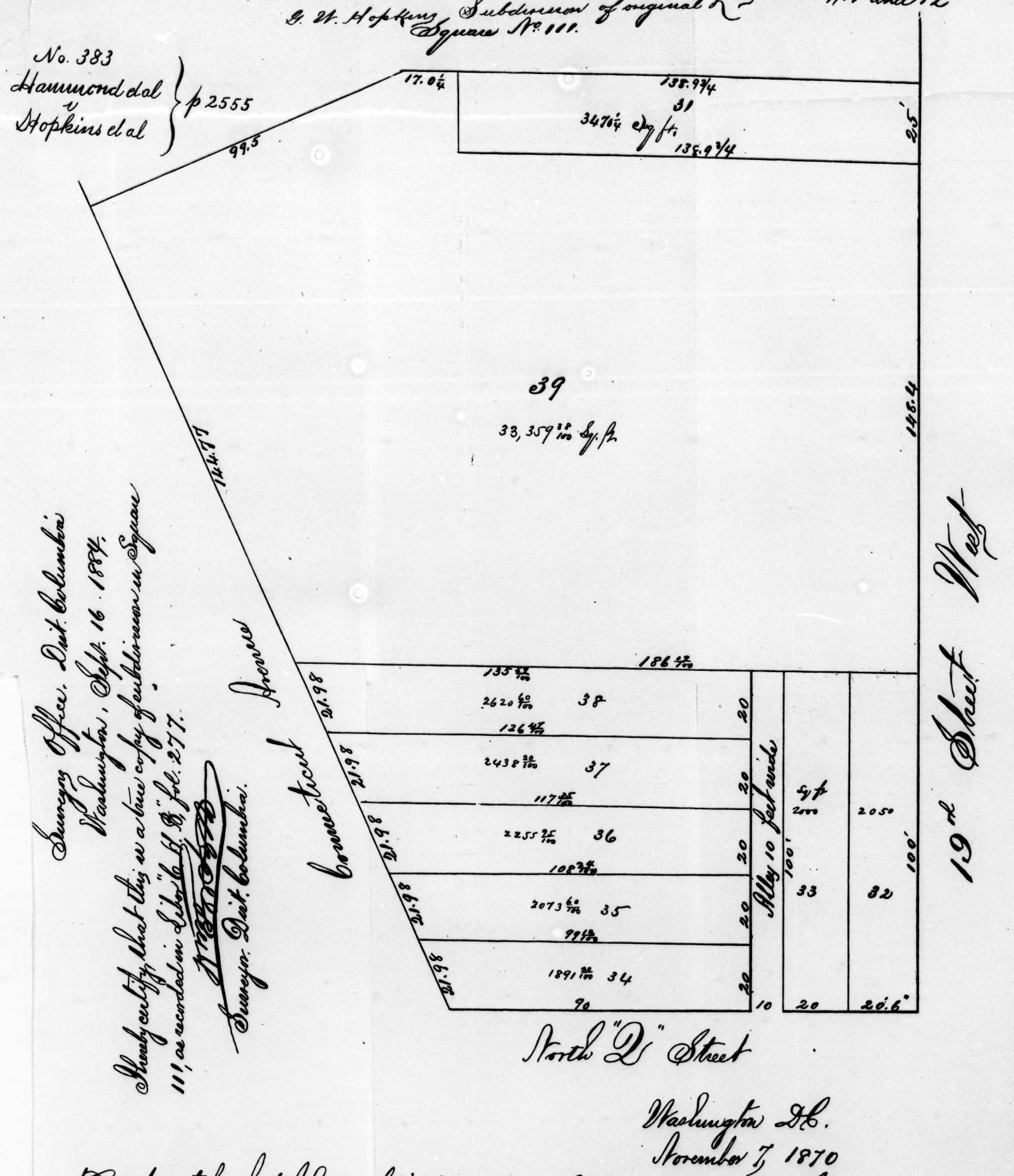
Exhibit R. S. B. No. 22. Surveyor District of Columbia.

167 K.

2554

Exhibit R. S. B. No. 23, of complainants testimony.

G. W. Hopkins Subdivision of original Lots 1.2.3.4.11 and 12 Square No. 111.



Surveyors Office. Dist. Columbia
Washington, Sept. 16. 1884.

I hereby certify that this is a true copy of subdivision of Square 111, as recorded in Liber G. H. Fol. 277.

Wm. Ballantyne
Surveyor. Dist. Columbia.

Know ye Donegal Presents

Washington D.C.
November 7, 1870

That is to certify that I have subdivided original Lots 1.2.3.4.11 and 12 in Square number One Hundred and Eleven (111) of which I am the proprietor, into the lots numbered 31 to 39 inclusively with an alley 10 feet wide as laid down on the above plat

Witnesses } Daniel Donovan (signed) William Morgan (Signed)

(Signed) Geo. W. Hopkins Seal

Surveyors Office
Nov 7, 1870

I hereby certify that I have examined the above plat of subdivision of part of Square number One Hundred and Eleven (111) and find the same correct according to the records in this office.

Given under my hand and the seal of my office this Seventh day of November Eighteen Hundred and Seventy

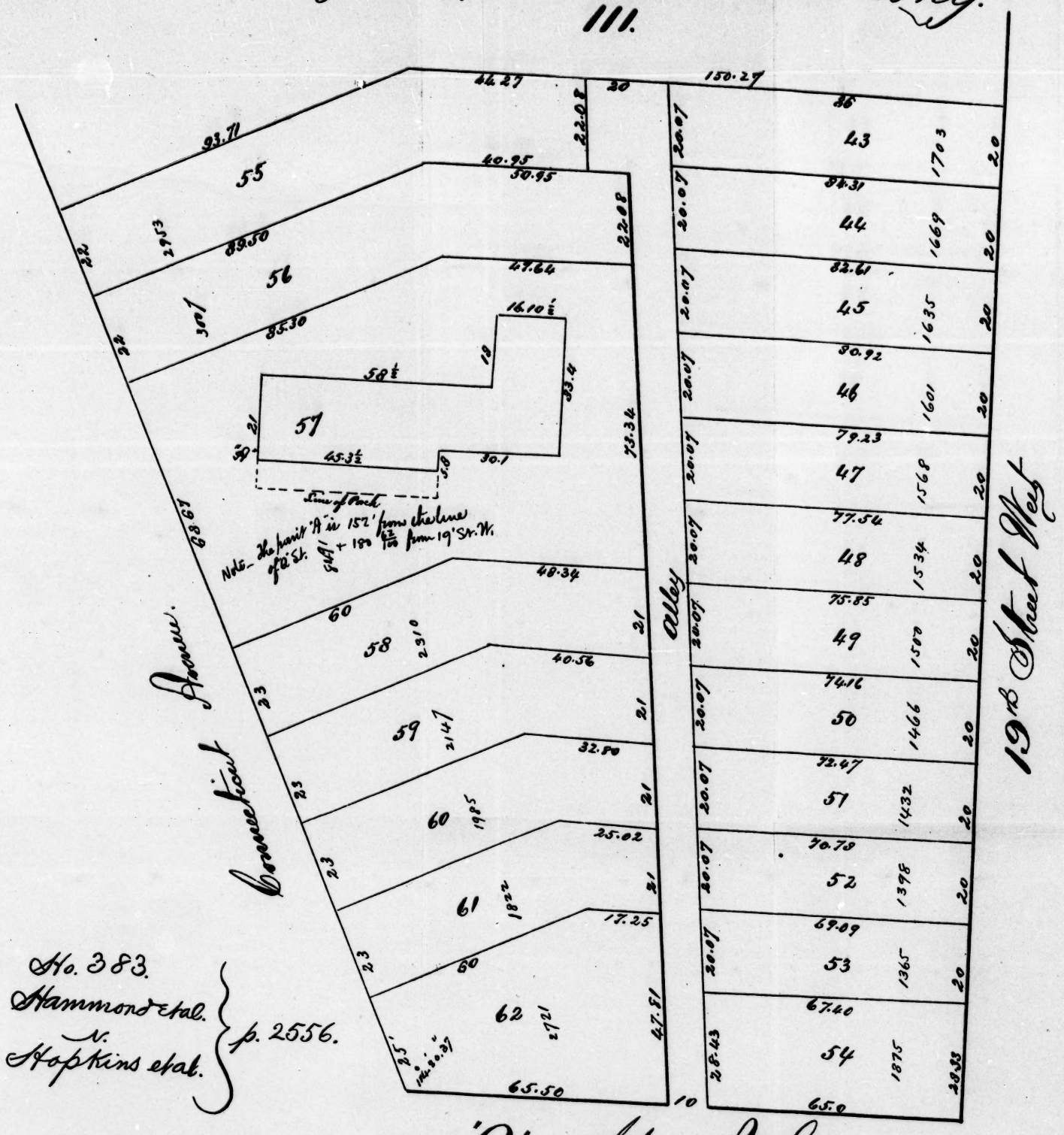
(Signed) P. H. Donegan
Surveyor D. C.

Exhibit R. S. B. No. 23.

1671

2555

Exhibit R.S.B. No. 24
of Complainants' testimony.
111.



No. 383.
Hammond et al.
v.
Hopkins et al.
} p. 2556.

Washington, D. C, June 17th 1878.

This is to certify, that we have subdivided lots 32.33.34.35.36.37, 38 and alley of G. W. Hopkins' subdivision in Square 111, (recorded Liber "O.H.H." folio 277) also lots 39, 41 and 42, of said Hopkins subdivision, (recorded Liber "H O.C." folio 58) into the lots 43 to 62 inc, and alley as laid down on above plat.

Witness } Joseph Allen, Jas H. Hopkins, G. N. Hopkins } as to all
as to G. N. Hopkins & Alley Luttrell

G. Hopkins (Seal) G. N. Hopkins (Seal)
Mary E. Hopkins (Seal) Lizzie B. Luttrell (Seal)
Jas H. Hopkins (Seal)

Surveyor's Office of the D.C., Washington D.C., June 17. 1878

I do hereby certify, that I have examined the above plat of subdivision of lots 32. 33. 34, 35. 36, 37, 38, 39, 41 and 42 & alley, Square 111, and find the same correct & to correspond with the records of this office. Given, under my hand and the seal of my office, this 17th day of June, A. D. 1878,

(Signed) Jas. A Partridge (seal)
Surv. of the Dist. Cola.

Surveyor's Office, Dist. Col. Washington Sept. 16 1884

The above is a true copy of the subdivision, Square 111, as recorded in Liber J.H. Fol. 373

Exhibit R.S.B. No. 24.

Surveyor, District of Columbia.

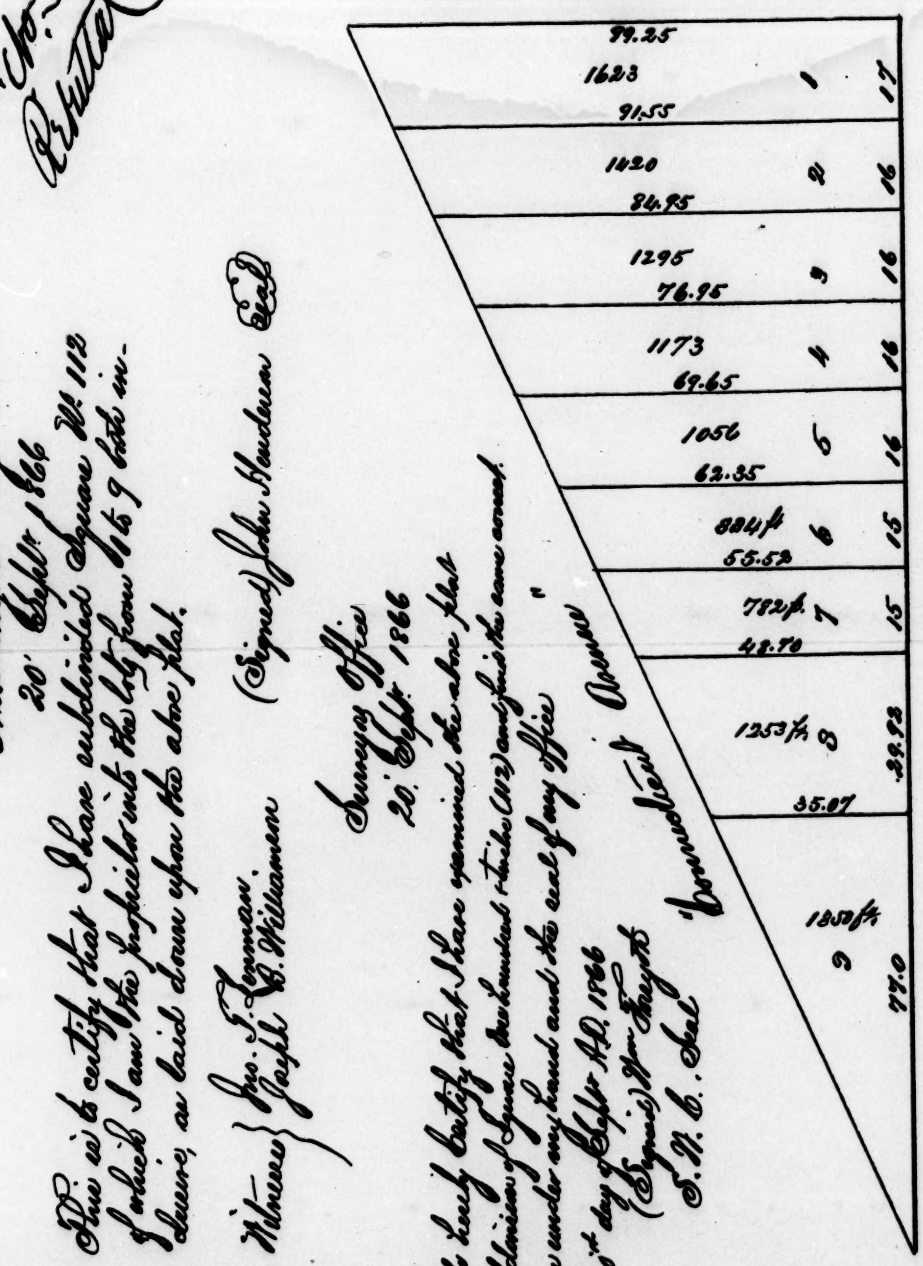
167 m.

2556

"Exhibit R.S.B.
No. 3, Rebuttal" attached
to deposition of Wm Forsyth

Exhibit
Deft's No. 3.
Rebuttal

"Q" Street North.



19th Street West.

Washington Co. D.C.
20th Sept. 1866

This is to certify that I have surveyed Square 112 subdivided as shown on the plat hereto annexed, and that the lots are numbered as shown thereon.

Witness { Geo. J. Lemon.
Joseph B. Williams

(Signed) John Hudson (Seal)
Surveyor.

Surveyor's Office
20th Sept. 1866

I do hereby certify that I have examined the above plat of subdivision of Square 112 and find it to be correct and in accordance with the records of my office.

Given under my hand and the seal of my office this 21st day of Sept. A.D. 1866

(Signed) Wm Tindall
Surveyor D.C.

No. 383.
Hammond et al
v.
Hopkins et al
} p 2605

The above is a true copy of the plat of subdivision of Square 112, as recorded in Book "W.B." page 209.
March 13th. 1886

W. B. Webb
Surv. D.C.

215.

2605